

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FAMILY ONE, INDIVIDUALLY)
AND AS GUARDIANS AND NEXT)
FRIENDS OF MINOR CHILD)
ONE; ET AL.,)

Case No.
9:22-cv-00028

Plaintiffs,

Beaumont, Texas

vs.

ADAM DALE ISAACKS, MIRANDA)
LYNN DUKES ISAACKS, LITTLE)
LEAGUE BASEBALL, INC.)
A/K/A LITTLE LEAGUE)
INTERNATIONAL, TEXAS)
DISTRICT 12 LITTLE)
LEAGUE, EVADALE LITTLE)
LEAGUE, AND BEAR CREEK)
HUNTING CLUB,)

Defendants.

**TRANSCRIPT OF PLAINTIFFS' MOTION TO COMPEL
AND TO STRIKE OBJECTIONS HEARING**

September 8, 2022

**BEFORE THE HONORABLE MICHAEL J. TRUNCALE
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

For the Plaintiffs:

MR. DAVID E. BERNSEN
MR. CADE BERNSEN
MS. MARIANNE E. LAINE
The Bernsen Law Firm
420 North Martin Luther King, Jr. Parkway
Beaumont, Texas 77701
dbernsen@bernsenlaw.com
cbernsen@bernsenlaw.com
mlaine@bernsenlaw.com

1 APPEARANCES (continued):

2 For the Defendants
3 Little League Baseball, Inc.
4 and Texas District 12 Little League:

5 MR. GEOFFREY S. HARPER (videoconference)
6 Winston & Strawn LLP - Dallas
7 2121 North Pearl Street, Suite 900
8 Dallas, Texas 75201
9 gharper@winston.com

10 MR. BRANDON W. DUKE
11 MR. ISAAC B. VILLARREAL
12 Winston & Strawn LLP - Houston
13 800 Capitol Street, 24th Floor
14 Houston, Texas 77002
15 bduke@winston.com
16 ivillarreal@winston.com

17 For the Defendant
18 Miranda Lynn Dukes Isaacks:

19 MR. BRUCE M. PARTAIN
20 Wells Peyton Greenburg & Hunt LLP
21 550 Fannin Street, Suite 600
22 Beaumont, Texas 77701
23 bpartain@wellspeyton.com

24 ALSO PRESENT:

25 MS. BRITLYN SANDERS, Legal Assistant
The Bernsen Law Firm

26
27 *****
28 APRIL HARGETT, CSR, RPR, RVR
29 Federal Official Court Reporter
30 300 Willow Street
31 Beaumont, Texas 77701

1 Proceedings reported by stenotype. Transcript
2 produced by computer-aided transcription.

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4 (The following proceedings were held in open
5 court commencing at 10:14 a.m., reported as
6 follows:)

7 (Call to Order of the Court.)

8 THE COURT: Thank you. Please be seated.

9 All right. The Court calls -- the Court
10 calls the case of *Family One, Individually and as*
11 *Guardians and Next Friends of Minor Child One and others*
12 *vs. Adam Dale Isaacks, et al.*, including various
13 defendants associated with the Little League Baseball.

14 We're here today on discovery matters;
15 primarily motions to strike certain objections, a motion
16 to compel certain documents, an issue regarding the
17 organization of proposed documents. And although it's
18 not this -- this hearing has not been noticed to discuss
19 this, there is an issue that has arisen regarding
20 certain -- a deposition of a particular individual who
21 lives in -- a man named Brent Stahlnecker who lives in
22 Williamsport, Pennsylvania. I -- if the parties
23 don't -- aren't prepared to move to discuss that, I'll
24 respect that, or if you want to discuss that, we can go
25 ahead and talk about that. I have some thoughts about

1 all these things.

2 First, let me have a roll call. I mean, I
3 know you, but I want to go ahead and get everybody on
4 the record and -- just who you are and if you're ready
5 to proceed.

6 Ms. Laine, I'll start with you.

7 MS. LAINE: Marianne Laine on behalf of the
8 plaintiff.

9 MR. C. BERNSEN: Cade Bernsen on behalf of
10 plaintiff, and Ms. Britlyn Sanders, who is a legal
11 assistant with our firm. And David Bernsen.

12 THE COURT: Okay. Thank you very much.

13 And, Ms. Sanders, I'm glad you're here
14 because I know you probably know more about these
15 discovery requests than anybody.

16 MR. C. BERNSEN: Absolutely.

17 THE COURT: All right. And then on the other
18 side -- Mr. Villarreal, I'll start with you.

19 MR. VILLARREAL: Yes, sir. Yes, your Honor.
20 Mr. Villarreal, Mr. Duke, and Mr. Harper for defendant
21 Little League Baseball and District 12.

22 THE COURT: Right. I understand.

23 And Mr. Harper had an issue with being here.
24 I allowed him to be here by Zoom because he had lawyers
25 in person and so that is consistent with my requirement

1 that parties appear.

2 Mr. Partain, I know this -- go ahead.

3 MR. PARTAIN: Good morning, your Honor.

4 Bruce Partain. I represent Miranda Isaacks.

5 THE COURT: Right. And Mr. Adams sends his
6 regard. He -- they have apparently, I'm told, shut the
7 freeway or interstate -- whatever road he's on --
8 apparently, there is some kind of a traffic issue. And
9 we did send smoke signals back to him and say we would
10 be glad to delay slightly. And -- but his GPS is saying
11 he won't get here until after -- about 11:30, and I
12 thought we'd just proceed, you know, without him. And,
13 besides, I don't think he's directly in the line of
14 fire.

15 I know we have experienced lawyers here. We
16 have three -- at least that I know of -- three former
17 law clerks in the Eastern District, which is helpful.
18 And I think I probably should give a bit of an opening
19 statement, I guess you might say, or speech so you, at
20 least, know, kind of, where the Court is on discovery
21 matters. I know Mr. Villarreal has heard the speech
22 numerous times and is probably tired of hearing it, but
23 perhaps worth repeating just so everybody knows, kind
24 of, the approach that the Court takes to things.

25 I know Mr. Bernsen will remember life before

1 the -- I think it was the 1989 amendments to the local
2 rules. That was at a time when Mr. Bernsen devoted his
3 talents to defending the corporate interests of -- not
4 just of America but some of the largest corporations in
5 the world. Driving up this morning, I remembered a case
6 we tried against each other where you were representing
7 corporate America and I was representing the injured,
8 *Mr. Dwayne Short v. Black & Decker*.

9 And I think -- notwithstanding my best
10 efforts, I think the jury was probably out about
11 15 minutes before you got a defense verdict in that
12 case. I don't remember exactly, but you did an
13 outstanding job in that case. And I mention that
14 because he's seen both sides of the docket. I know my
15 law clerks -- the law clerks who have been in here have
16 seen both sides of the docket. And back -- I think it
17 was around '89 -- there was a new rule that came out,
18 local Rule 26(d). And I thought it was the -- kind of
19 the end of the world in many ways. Communism had really
20 come to Southeast Texas.

21 However, I worked with this rule for about
22 30 years in federal court and found it to be quite
23 useful. And, in fact, it was great because when we got
24 to trial, we knew -- we knew everything you needed to
25 know about the case. And from the standpoint now of a

1 judge, I see the wisdom in it that Judge Parker and
2 Judge Fisher had when they, no doubt, came up with this.
3 But, also, before I say anything else, the briefing on
4 this issue by both sides is quite impressive, and my
5 compliments to both sides for flushing out these deals.

6 In fact, these are almost treatises on
7 discovery. And it's well-written, well-researched, and
8 I commend both sides for that effort. Having said that,
9 back to this rule, and looking at it from the judge's
10 perspective, discovery disputes were important. But to
11 put some things in perspective, in the three and a half
12 years since I've been on the court, things have changed.
13 When I was -- took my oath, I had seven civil cases
14 assigned to me. Seven. Now -- now we're probably
15 running between Beaumont and Lufkin civil cases assigned
16 to me over 500 per year. Per year. That should give
17 you the idea of the litigation activity that has
18 increased here. It looks as if I will be on the bench
19 -- we've got five trials scheduled that are going to go.
20 I'll be on the bench all of October and into November
21 trying them back to back to back similar to the days
22 when Judge Fisher used to sit on the bench and try them
23 one right after another. Well, that's the Beaumont
24 division now.

25 And that -- I say that in the context of --

1 oh, by the way, we also have two significant injunctions
2 on top of the other trials, as well as, as you former
3 law clerks know, all of the other day-to-day incidental
4 orders that get turned out just -- just because, you
5 know, it's like motor oil in an engine. It keeps it all
6 going. But this rule, I think, was designed, perhaps,
7 to help the judges with beautifully written objections
8 and briefs on discovery because it does take time. And
9 I had been sending these to our wonderful magistrate
10 judges, but I wanted to keep this one as opposed to just
11 referring it to one of our magistrates.

12 So let's get back to the rule. The rule says
13 that you must -- these are to guide you -- whether or
14 not a piece of information is relevant to any person.
15 You have to produce anything relevant to any party's
16 claim or defense. And that includes identifying
17 individuals who, if they were know, would might
18 reasonably be expected to be deposed or called by a
19 witness by any of the parties. And it's likely to have
20 an influence -- that's broad -- or affect the outcome of
21 a claim or defense. It's information that deserves to
22 be considered in the preparation, the evaluation, or
23 trial of a claim or defense and is information that --
24 and this is interesting because I always thought I might
25 have to stand in front of Judge Fisher and explain why

1 I'm an unreasonable attorney. I'm sure he inserted this
2 language. Is information that reasonable and competent
3 counsel would consider reasonably necessary to prepare,
4 evaluate, or try a claim or defense.

5 As I've said many times, as
6 Mr. Villarreal will attest, the discovery bucket
7 in the Eastern District is big. Big bucket. The
8 admissibility bucket is smaller. Different set of
9 rules apply to that, but in looking at this, we have
10 to -- I have to view it from a rather broad brush. That
11 does not mean that privileges or legitimate objections,
12 especially to the things being unreasonably burdensome
13 or expensive or harassing or things of that nature --
14 that those objections go away. But -- and it's a
15 relative thing.

16 Now, I come to this position as your judge,
17 in large part having learned a lot of lessons from
18 litigating cases against Mr. Bernsen and other fine
19 lawyers in Southeast Texas, and -- like, for example,
20 number of documents. Well, I've been in cases where the
21 number of documents were in the millions, and we had to
22 use documents in a cloud. I remember one case I
23 produced documents that came from China. They arrived
24 in an 18-wheeler with a forklift to carry them off. We
25 opened up all those boxes, and all those millions of

1 documents were in Chinese.

2 Opposing counsel didn't even come to inspect,
3 but we produced them. They were available for
4 inspection. Now, you say, well, that might be
5 oppressive. Well, we tried that, but given the
6 magnitude of that case, it's worth scouring the earth to
7 find every document that's important. On the other
8 hand, a slip-and-fall at Walmart. I know the number
9 20,000 has been raised. Well, 20,000 documents might be
10 excessive for a slip-and-fall case at Walmart. So it's
11 all a matter of degree, and there isn't a direct formula
12 that I can apply. But that's where the lawyering comes
13 in. But know that on a significant case -- and I think
14 this is probably a significant case -- 20,000 documents
15 is not excessive. And I'm just using that as, kind of,
16 a guide to things.

17 Since we're talking without going through the
18 specifics, I appreciate a couple of things. Number one,
19 the dilemma that lawyers on both sides -- but mostly on
20 the defense side -- have when it comes to raising
21 objections. As you know, if you don't raise an
22 objection, you waive it. And having to explain to a
23 client why you didn't raise what might be in most courts
24 considered a legitimate objection might be, kind of, a
25 hard pill to have to swallow and -- certainly in

1 representing your client. However, in 34 years of the
2 practice of law, I learned -- sometimes after being
3 admonished by various judges -- that, perhaps, I should
4 use a deer rifle with my objections as opposed to a
5 shotgun because a deer rifle is more effective.

6 And with that being said, I would often
7 raise -- well, actually, toward the end, I, kind of,
8 even gave up on that and just put one or two that I
9 thought are -- could stand in front of a judge and
10 defend, even if it meant I waived an objection. I'll
11 deal with the client later on. I'm representing them
12 on -- so sometimes less is more. But I do think a way
13 to do it is to go ahead and put a lot of objections --
14 as many as you can justify -- and then when pressed by
15 opposing counsel, then thin it out, prune the tree, and
16 go with those.

17 And, I think, as I understand it, that has
18 happened pretty much in this case. Am I correct on
19 that? Let me first hear from the plaintiff? Or there
20 may be a few lingering ones we still need to deal with,
21 but -- the microphone -- either use that one or --

22 MR. C. BERNSEN: Judge, is the question --
23 well, it's complicated.

24 THE COURT: Uh-huh.

25 MR. C. BERNSEN: First, you know, the -- the

1 fact that they -- that they used general objections and
2 these reservations of rights and then saying they're
3 objecting because there's a motion to dismiss pending.
4 And they're reserving their right to produce documents
5 after you've ruled on that. You know, those were
6 completely inappropriate. And then on top of that, they
7 went in each one and did boilerplate, cut-and-paste
8 objections. And so our stance is that -- over in state
9 court, I remember -- and I think it is the rule here --
10 that if you -- valid objections that are obscured by
11 voluminous boilerplate objections are waived.

12 And so our stance is that their objections
13 are waived on all of them because what they did -- for
14 instance, like on plaintiffs' Request for Production
15 No. 3, it was due -- they filed their answer July 13th
16 and produced zero documents. They just -- they just did
17 this huge general objections, reservation of rights
18 saying it's premature because of the motion to dismiss.
19 All of which is completely -- is my understanding is
20 completely inappropriate under the federal rules and
21 here in the Eastern District as well in Beaumont.

22 And then underneath all those, Judge, then
23 they would say -- they would just go through the laundry
24 list; vague, ambiguous, irrelevant, overly broad, unduly
25 burdensome. And so we're in a situation -- I drafted

1 the discovery. I mean, I drafted it. And I went
2 through -- the words that I used -- it was -- it was --
3 I mean, I thought I did a pretty good job. And I went
4 through and used their own terminology.

5 THE COURT: Including subfolder, to-do items,
6 LLB meeting minutes, and meeting agenda?

7 MR. C. BERNSEN: Yes, your Honor. And I have
8 exhibits to show you where -- you know, not all of them,
9 but an example -- all of the terminology we used comes
10 from their website. And then they're coming in and
11 saying --

12 THE COURT: Okay.

13 MR. C. BERNSEN: -- vague, ambiguous. No,
14 it's not. No, it's not. Unduly burdensome. Ten
15 years -- ten years is too much. No, it's not. Ten
16 years is not too much, Judge. What we have evidence of
17 is that these little boys were hurt and molested and
18 raped in some cases '21, '20, '19, '18, possibly '17.
19 So we're asking for ten years of documents.

20 THE COURT: You mean 17 years ago?

21 MR. C. BERNSEN: No. No. '20, the years.

22 THE COURT: In the year. Okay. I'm sorry.

23 MR. C. BERNSEN: The year.

24 So when they brought it up before, ten years
25 is too much. No, it's not. It's not. Because if you

1 think about it, we're talking about ten years from
2 today. And so, you know --

3 THE COURT: Okay.

4 MR. C. BERNSEN: So -- anyway, it is not --
5 they put that in their motion and their sur-reply that
6 they filed yesterday that it's -- that the objection
7 issue is -- is somehow -- I think what they're getting
8 to is moot, and it's not in our mind because we believe
9 all their objections have been waived. And then, plus,
10 the ones that they changed -- was it yesterday? This
11 week?

12 MS. LAINE: It was two days ago.

13 MR. C. BERNSEN: Two days ago, they
14 finally -- we have these amended objections -- the
15 latest ones two days ago -- and they're still
16 withholding many, many documents. They're still --
17 there's still a bunch of boilerplate objections that
18 carried over from the first inappropriate round of
19 objections. So when you say has it been settled, it's
20 complicated. No, it hasn't, in our mind.

21 THE COURT: We're still at the 30,000-feet
22 level at this point. And that was Mr. Cade Bernsen
23 speaking. And I appreciate the comments. And we may
24 have to drill down a little bit later on.

25 Let me just say -- I saw Mr. Duke shaking his

1 head, yes, that we did trim the bush back a little bit.

2 Do you want to address this issue?

3 MR. DUKE: Well, I was nodding that we did
4 amend and that the amounts of -- there was a meet and
5 confer back and forth, and several of the issues that
6 were raised in the initial motion had been addressed.
7 And that was what I was responding to, but Mr. Harper
8 was directly involved in those.

9 THE COURT: All right. Mr. Harper, I'll let
10 you speak.

11 And, again, we're at the 30,000-foot level.
12 We'll drill down later as we go.

13 MR. HARPER: Your Honor, in light of that, I
14 wasn't -- obviously, there was a lot raised there. I
15 will just tell you that we're doing the best that we can
16 here. We recognize that there was some objections that
17 were aggressive, and we -- the first thing I did when I
18 got here was work with everyone to take care of it. In
19 fact, after -- we had a separate meet and confer with
20 them last week. We went back and revisited some of
21 this. That's why it took so long to be here.

22 We're -- we feel like we've done what -- what
23 we think is right at this point with the objections we
24 have left. I'm not really sure --

25 THE COURT: Okay. So we may drill down

1 later.

2 Let me make a comment that -- with the idea
3 of ten years -- you know, if it's just an unlimited
4 request, that would be overly broad because it's not
5 limited as to time. Ten years may well be appropriately
6 tailored, I'll say that, just, kind of, from the outset.
7 And the other thing I heard in that exchange was, well,
8 we, kind of, don't want -- the defendants don't want to
9 produce records pending rulings on dispositive motions.
10 And what I have discovered is that essentially motions
11 to stay in this court will rarely be granted because
12 we've seen early on how that can be abused. And, in a
13 way, withholding documents pending a ruling on a
14 dispositive motion, in a sense, is a quasi or semi stay
15 that a party has imposed on a case without even, you
16 know, coming to me.

17 There may well be, as some of you know -- in
18 the patent cases that come before me now, by agreement
19 we -- and it is in scheduling orders. We'll put the
20 damage discovery after the Markman hearing because that
21 makes economic sense in the preparation of a case.
22 We've discovered that in hurricane cases, it is a good
23 thing to put the bad faith discovery in damages after
24 discovery on the basic damages to the structure because
25 oftentimes cases settle after you've sorted out how many

1 shingles have been torn off the roof. In the case of a
2 patent, how is the patent being defined. And people --
3 so that makes sense. And there may be some times when
4 we'll want to alter the scheduling order to accommodate
5 the specific needs of a case because it makes economic
6 sense.

7 However, people ask me over and over again,
8 will you stay -- we're confident our 12(b)(6) motion,
9 our motion for summary judgment is going to be granted,
10 or our motion to remand the case back to state court
11 will be granted, therefore stop all discovery. And I
12 don't do that. And that's just -- as I mentioned
13 before, that's with a special understanding. I don't do
14 that because we have, not only an open basket for
15 discovery in the Eastern District, but with initial
16 disclosures and the way we proceed, we want to get the
17 discovery out there.

18 If the case gets remanded back to state
19 court, well, then you can take your discovery from --
20 that you got in federal court and take it back to the
21 state court with you and use it there. If there's
22 discovery -- and, by the way, if something needs to be
23 protected, I'm pretty liberal about granting protective
24 orders, so you don't have to worry about that. Let's
25 get that information out here, exchanged, and if a

1 dispositive motion is granted, well, what I would say to
2 the defense counsel is take a victory lap and write a
3 long letter to your client telling them what a great
4 lawyer you are and that you won.

5 At that point, whatever was produced in
6 discovery is -- yeah. There was some expense associated
7 with it, but, you know, it's the cost of doing -- it's
8 just -- that's life, you know. And we don't hold off on
9 discovery until we tidy up -- because then that creates
10 other issues. If I do that, then it's inevitable that
11 we're going to have to completely modify the scheduling
12 order and bump everything back, which that's pretty easy
13 to do if you have a court with only seven cases in it.
14 But when you're running 500 civil filings a year, what
15 we're finding is we're running out of, well, I can give
16 you a trial setting in a month. Those days are over. I
17 mean -- and then we're looking at a year down the road.
18 Next thing you know this case is three years old, and,
19 as the law clerks know, I'm having to explain to the
20 Fifth Circuit why I haven't disposed of this case.

21 And so, you know, there are some pressures
22 that come to play that you may not know of. So I'm
23 really not inclined to allow delays in discovery pending
24 dispositive motions. I want to go ahead and get that
25 out. Besides, there might be some document that may be

1 produced that may have bearing on some dispositive
2 motion, which if you'll notice in my scheduling order --
3 and I know Mr. Villarreal is aware of this having
4 clerked for me -- I do something that's a little
5 different than what most federal judges do across the
6 country. I put my discovery deadline after the motions
7 for dispositive motions because just in the event
8 there's just some little tidbit -- oh, my goodness, we
9 forgot to get some evidence on that particular
10 element -- you have a very limited window to fix that,
11 but at least the scheduling order isn't outcome
12 determinative. I want the scheduling order to be
13 outcome neutral as best as it can be. Deadlines are
14 deadlines. I don't want the scheduling order to be used
15 as a tool to say, got you, when it's just a matter of
16 scheduling.

17 And as I remember on this case now, we set it
18 pretty far down the road because we thought it was going
19 to be a rather complex case with a lot of discovery.
20 And I think that's probably proven to be the case.
21 So -- yeah. I pushed things off, but if I have to amend
22 the scheduling order again to accommodate delayed
23 discovery production, then, well, I might as well go
24 ahead and write my letter now to the Fifth Circuit
25 saying this case is going to be a delayed case. And,

1 you know, that's not what we want to do.

2 So -- now, I understand, too, in cases with a
3 lot of discovery, you may have some rolling discovery.
4 And that's understandable.

5 I saw Mr. David Bernsen look like he wanted
6 to say something.

7 Go ahead. Then I have some more general
8 comments at the 30,000-foot level, and then we'll get
9 down to the weeds here in a minute.

10 MR. D. BERNSEN: Thank you. For the record,
11 David Bernsen.

12 THE COURT: Uh-huh.

13 MR. D. BERNSEN: Thank you for allowing us to
14 have this hearing today. And things have changed. I've
15 seen -- you and I have both seen change over the course
16 of litigation in this building and other buildings. And
17 what we're trying to do and what we've said in our
18 motion is that we're trying to keep to the Court's
19 instructions and the scheduling order that we -- that
20 this Court has set. And we're having difficulty getting
21 there. And that's why we're here before the Court.

22 The comments about the -- well, we don't have
23 any issues with counsel about the specific requests for
24 production, we disagree with. There are -- there are
25 issues, and it began, as we said in the motion -- and I

1 set out a timetable -- we set out a timetable to see
2 the -- to allow the Court to see the evolution of this
3 case in terms of the disclosures, lack of disclosures,
4 and the discovery -- trying to get documents that we
5 think should have been produced in disclosures. And
6 then we're having trouble, even with the specific --
7 Cade Bernsen's request for production.

8 At the outset, your Honor -- and I want to
9 say this: Mr. Isaacks was arrested in the latter --
10 like, the 30th of December. There are documents that
11 show that Little League and District 12 and everybody
12 knew about it immediately.

13 THE COURT: Uh-huh.

14 MR. D. BERNSEN: On January the 18th, I
15 believe, Cade, my son, sent a letter -- a representation
16 letter, as well as a preservation of document letter, to
17 both of these defendants.

18 On January the 30th, we filed a 62-page
19 petition, which teed it up on all of the areas that we
20 thought were important. And we know that these
21 defendants -- or at least Little League Baseball -- this
22 is not their first rodeo in these type of cases. And
23 having been on the defense side and knowing that we have
24 produced, as defense lawyers, millions of documents, and
25 we have specifically produced them in terms of being

1 responsive to a particular request for production. One
2 of the primary objections that we have, in addition to
3 others, is the method and manner in which they produced
4 those documents.

5 They -- I know they have certificates or
6 affidavits saying it's produced in the ordinary course
7 of business. Well, the rules say that if you keep them
8 all in a box all mixed up and that's the ordinary course
9 of business --

10 THE COURT: Well, hold on. Let me just
11 discuss something. That's Rule 30 --

12 MR. D. BERNSEN: Thirty-four.

13 THE COURT: Let me see here. And -- let's
14 just deal with that because that is on my mind, too.

15 MR. D. BERNSEN: Mine's all highlighted and
16 earmarked and has paperclips and tabs and everything.

17 THE COURT: Yeah. And you, kind of, know --
18 my concern -- it uses the term "or". And I know I have
19 that marked. Let me see here.

20 MR. D. BERNSEN: I believe it's
21 34(b)(2)(B).

22 THE COURT: 34(b)(2)(B.) Yeah.
23 Double (i) -- single (i). "A party must produce
24 documents as they are kept in the usual course of
25 business." Okay. Fair enough. "Or must organize and

1 label them to correspond to categories in the request."

2 Now, again, I go back -- sometimes in this
3 job, I find myself being more the way I was as a lawyer
4 than as a judge. Because I had the -- proud to be able
5 to represent some of the largest companies in America
6 and, you know, around the world. And, you know, you get
7 your request for production. You don't go to your
8 client's place of business and just start collecting
9 documents, right? You say they've requested 30 items,
10 and we need to find documents pertaining to these 30
11 items. And although, I think, in this case, it's more
12 like 200.

13 But as you collect documents from the client,
14 you're keying them to the request.

15 MR. D. BERNSEN: Absolutely.

16 THE COURT: And what we used to do was say,
17 okay, here's Bates Stamp 1 through 20,000 -- Documents
18 1,000 to 2,000 pertain to Request For Production 7, 10,
19 and 15. And you know that because that's why you --

20 MR. D. BERNSEN: Collected them.

21 THE COURT: -- collected them to begin with.
22 And I think -- I think -- I don't see that it's being
23 overly burdensome just as a general principle to do
24 that. At least to tie it to the request -- and,
25 granted, there could be some overlap.

1 MR. D. BERNSEN: Sure.

2 THE COURT: And that's why you sometimes do
3 it that way.

4 MR. D. BERNSEN: Yes.

5 THE COURT: I don't have a problem with that.

6 MR. D. BERNSEN: Well, we would need -- we
7 would ask the Court to suggest -- order the defendants
8 to do that. You mentioned this earlier, your Honor.
9 I've represented Mobil. I've represented recently
10 Valero, and we produced millions of documents, whether
11 it was personal injury, tax case, whatever. And that's
12 how you go get them from your clients, whether it's this
13 plant's facility here or if it's up in Illinois or out
14 in California. We would sit down and get them. And
15 when we produced them, they were in response to a
16 particular category or request or -- so that the other
17 side, both plaintiffs and defendants, could see what the
18 heck we were producing in response to what a particular
19 request was.

20 With the Court's --

21 THE COURT: You may.

22 MR. D. BERNSEN: Your Honor, on the 29th of
23 August at 10:00 o'clock, they produced these documents.
24 It was, I think -- I think it was 23,000 Bates labeled.
25 Well, I had to put it up. I'm old school. I like to

1 see and read the documents and touch them. And this is
2 the first of 35 books or the third of 35 books in this
3 latest production. And if you go through them -- any of
4 the production -- there's not a rhyme or reason as to
5 subject matter, topic, date. And you've got that as one
6 Bates label. That's one -- that is 51 -- 0005128.
7 Well, it's a spreadsheet with about 40 documents -- 40
8 pages. Well, I've read them. I've gone through here,
9 and I've tabbed them. They are documents that are
10 incomplete.

11 There are documents that are not -- don't
12 have the attachments to them. And so -- and I don't
13 know what this is in response to because, not only do
14 defendants not identify the particular request for
15 production, they don't identify which of the -- we filed
16 three or four -- four requests for production, so we
17 don't know what these documents are responsive to.
18 Request for Production No. 4 or 3 or 2. We know it is
19 not one because we were trying to get the insurance
20 policy. But we don't know -- and we're supposed to go
21 look through it and pick out ourselves -- the gentleman
22 -- I can't think of the young lawyer's name, nice man,
23 said, "If you have a question, tell us, and we'll go
24 tell you what it's responsive to."

25 Well, your Honor, we both know that's how you

1 collect them from your client. Here's the topics and
2 give me what you have. And that's all we're asking them
3 to do is -- it's -- what they've done is not fair. It's
4 not reasonable. If this is the ordinary course of
5 business, which I don't think it is -- even with their
6 affidavits, it's -- we would ask this Court to ask these
7 defendants --

8 THE COURT: Well, like that spreadsheet, it's
9 produced -- that's kept in the normal course of business
10 as a spreadsheet.

11 MR. D. BERNSEN: Yes.

12 THE COURT: Fair enough. But the other part
13 of the rule -- and so we're clear, it is
14 34(b)(2)(B)(i) -- it says "or". It's not "and". It's
15 "or". And I think it is reasonable. So I'm going to
16 order that the -- that there be some sort of a
17 supplement that identifies the -- and ties the Bates
18 stamped number or numbers -- usually there's a range --
19 to a specific one or more request for production.

20 Is there any problem with doing that? Let me
21 ask the defendant before we leave this point.

22 MR. DUKE: I'm going to refer to Mr. Harper.
23 He did note that it's difficult for him to hear.

24 So to the extent you can talk into the
25 microphone, that would be helpful.

1 MR. D. BERNSEN: Me?

2 MR. DUKE: Yeah. I'm just saying --

3 MR. D. BERNSEN: I'm sorry. Usually, I'm too
4 loud, and people tell me to calm down.

5 MR. DUKE: I just thought I'd mention that.

6 MR. HARPER: Sorry. Your Honor, we will do
7 whatever you want. The only issue is going to be time.
8 With the amount of documents we have and then, of
9 course, the problem is so many are tied to ten or more
10 requests. It's going to take a while, but I would
11 say -- for that, your Honor, I would ask -- we're happy
12 to do it. It will take us -- I'd like at least a week,
13 two weeks.

14 THE COURT: A week? Two weeks?

15 MR. D. BERNSEN: I hear counsel, and I
16 feel -- I feel his pain.

17 THE COURT: I know.

18 MR. D. BERNSEN: The -- we've lost a summary,
19 your Honor. These documents -- some of these documents
20 should have been produced with the initial
21 disclosures --

22 THE COURT: But we are where we are now, and
23 we're trying to fix the flat tire. And it's going to
24 take -- I understand you're saying this tire should have
25 been fixed back in July. Okay. We're in September.

1 He's wanting one or two weeks, which --

2 MR. D. BERNSEN: How about ten days?

3 THE COURT: Ten days is splitting the
4 difference, and I'm comfortable with that.

5 Is that to your satisfaction?

6 MR. HARPER: Your Honor, the answer is, you
7 know -- I've learned we meet whatever deadline you give
8 us --

9 THE COURT: We're going to give you a
10 deadline of ten days to do that. And --

11 MR. DUKE: Your Honor, I just wanted to -- I
12 think Mr. Villarreal wanted to mention something.
13 But --

14 THE COURT: Please do.

15 MR. DUKE: I think -- just for a second, we
16 wanted to correct the misimpression how these documents
17 were collected was the way it was described and maybe
18 had been done in the past. Just because of the broad
19 scope of the request, it's actually -- you do ask your
20 clients for their entire files and e-mails, and we have
21 to sort through them to try to help identify them. It
22 is a little bit different.

23 I agree with Mr. Harper. We're happy to
24 do whatever -- we're obviously going to do whatever the
25 Court says.

1 THE COURT: But, I mean --

2 MR. DUKE: I don't want to leave the
3 misimpression that the affidavits are somehow incorrect
4 or wrong. They were collected and produced in ordinary
5 course. They're e-mail electronic files that have --

6 THE COURT: That's great.

7 MR. DUKE: -- searchable information that --
8 so we're going to have to do what they would have done
9 and that's what's generally done in the past. And the
10 offer that was made was --

11 THE COURT: Well --

12 MR. DUKE: -- for things -- like, some of the
13 requests say, "Identify the documents used to create" --
14 you know, "used to respond or" -- yeah. "Used to
15 support this position" or things like that -- that would
16 normally be an interrogatory. We're happy to -- our
17 offer was, if that's something that you couldn't easily
18 do because the way the request was worded, we were happy
19 to do it.

20 But, setting that aside, if the Court wants
21 us to go through the individual documents and identify
22 those, we'll do that.

23 THE COURT: I suppose if -- you know, I go
24 back to the rule and the wisdom of Judge Fisher and
25 Judge Parker. I was vehemently opposed to it -- quietly

1 so -- when the rule came out. I saw the wisdom in it.
2 In fact, in some cases, I just dispensed with sending a
3 request for production at all because I was getting what
4 I thought would be -- everything that a reasonable
5 lawyer thought -- I had some pretty good lawyers on the
6 other side that I thought were pretty reasonable. And
7 if I thought I was getting enough information to go try
8 a case -- I can't make the case out of these -- can't
9 make a campfire out of these sticks, then there's no
10 fire to be made.

11 So what it may be then -- what I'm hearing
12 is, yes, you've got some documents that were related to
13 a request for production. And notwithstanding over 200
14 requests for production being sent, there might be a
15 document that doesn't fit one of those categories, but
16 you come under the default provision of our local rule.
17 And if that's the case, then you're saying you produced
18 it just because you thought it might have bearing on
19 some claim or defense. I guess you could do that, too,
20 but identify it that way. But if you don't think it
21 relates to one of the requests for production, but you
22 thought it was -- maybe there should have been -- no
23 offense to Mr. Cade Bernsen -- but maybe he should have
24 come up with an additional request for that and didn't
25 think of it, and you went ahead and produced it anyway.

1 That's fine.

2 MR. DUKE: I think we're good. And so we're
3 happy to -- I think he just wanted to clarify some
4 stuff. I think I briefly did that.

5 THE COURT: Thank you very much.

6 MR. D. BERNSEN: Okay.

7 THE COURT: So we're going to get that done
8 in ten days. So that takes care of that.

9 Now, do you want to talk -- before we drill
10 down, do we want to talk about this witness?

11 MR. D. BERNSEN: Yes. Yes. We can do that
12 right now.

13 THE COURT: Is the defense ready to talk
14 about that?

15 MR. DUKE: Yeah.

16 THE COURT: Technically, it wasn't noticed
17 for this. Let me say -- before I came out here -- I
18 don't know this guy. He lives in Pennsylvania. He's an
19 officer or somehow or another has a position with the
20 Little League. Unless I'm misunderstanding something --
21 and I certainly would appreciate being corrected if I
22 misunderstood something -- unlike some of the local
23 people, I doubt he's going to have any information from
24 his own personal knowledge about what happened to these
25 young men.

1 Any -- I'm, kind of, having a hard time
2 understanding how he would have any information
3 outside of his position as an officer in the Little
4 League, Inc., or whatever the entity is. With that
5 being the case -- and giving consideration to he's all
6 of the way in Pennsylvania, and there's an expense to
7 flying up there and renting hotels and renting cars that
8 cost a fortune now and all this other stuff. Produce
9 him one time in his capacity as a corporate official.
10 And then that being said, maybe a 30(b)(6) would be the
11 way -- it is not a waste of everybody's time. Granted,
12 they'll woodshed him, but I'm sure the -- you've
13 probably woodshedded a couple of yours.

14 MR. D. BERNSEN: Absolutely.

15 THE COURT: I mean, that's fair. That's fair
16 game. Getting him queued up so he's not completely in
17 the dark. At least he knows what policies and
18 procedures he's going to be asked to opine or give an
19 opinion about or testimony about as a corporate officer
20 and avoid having to come back later at expense to
21 everybody. Mr. Partain's client, as I recall at our
22 last meeting -- there might be limited budgets
23 associated. And I think Mr. Adams' client as well. I'm
24 not sure.

25 But, I mean, I think -- I've, kind of, got to

1 balance some things here. And I'm thinking that the
2 30(b)(6) would be a way you can get this guy's
3 deposition, and it's clean. And, at least, he knows,
4 kind of, in advance the subject matter. I'm not asking
5 you to deliver the questions you're going to ask him,
6 but I think that's probably a pretty fair way to
7 proceed. And maybe not just in terms of what 30(b)(6)
8 has to offer us as guidance, but just the practicalities
9 of getting an all-in-one stop shop without having to go
10 back to Pennsylvania for a second -- and, also, by the
11 way, I know plaintiffs typically don't like to produce
12 their witnesses more than once.

13 MR. D. BERNSEN: That's absolutely true.

14 THE COURT: And -- because you don't want to
15 give the other side a second bite at the apple unless
16 there's a -- sometimes a supplemental deposition is
17 authorized but with very stringent limits. I'll produce
18 my client or my -- for second deposition, but you're not
19 going to go back and ask what you asked the first time
20 to see if he's changed his opinion about that.

21 You know, so I think that's -- I'm inclined
22 to go with this 30(b)(6) unless there's something I'm
23 missing that this guy has some information outside of
24 his position as an official within the company. What am
25 I missing? Anything?

1 MR. D. BERNSEN: No, your Honor. Thank you.
2 Those are points well-taken. Originally, one of the
3 reasons we did not want to do a 30(b)(6) one was up
4 until the 29th of August, we didn't have any documents.

5 THE COURT: Okay.

6 MR. D. BERNSEN: And so I said, well, you
7 want us to go take a 30(b)(6) person, and we don't
8 even -- y'all are not producing documents that I know
9 you have. That was one issue. The second issue is he's
10 the man who signed the discovery and -- supposedly
11 coordinated the discovery, and I have some questions I
12 want to ask --

13 THE COURT: Did he verify the
14 interrogatories?

15 MR. D. BERNSEN: Yes, sir, he did.

16 THE COURT: Okay.

17 MR. D. BERNSEN: So I want to ask him about
18 that because -- I'll just say this: I've got a feeling
19 he's -- he'll be more forthcoming if I'm looking at him
20 eyeball to eyeball. And I expect to take his deposition
21 myself and ask him about some of these documents that
22 he's supposed -- they were supposed to have produced.
23 And we'll -- when they produced them -- he is also the
24 -- yeah. I'll tell him -- it's fine.

25 THE COURT: We're going to go with

1 30(b)(6) --

2 MR. D. BERNSEN: Your Honor, excuse me one
3 second. This first document right here. Excuse me.
4 This is their --

5 THE COURT: While he's getting back to the
6 lectern, I want to thank Ms. Sanders for keeping him
7 organized.

8 MR. D. BERNSEN: Okay. Your Honor, this is
9 their disclosures -- these documents. It's 1 through
10 1310. It is -- it is three -- four documents -- ten
11 documents with Evadale Little League. The rest of it
12 are manuals -- Little League manuals -- you could go get
13 it from somebody else. They didn't produce their
14 insurance policy. We raised Cain about it.

15 Marianne, can you hold that second document
16 up?

17 Then they sent us -- what's the date on that?

18 MS. LAINE: June 17th is the dec pages and
19 COIs.

20 MR. D. BERNSEN: COIs. In those dec pages
21 for District 12, it lists something -- we met and
22 conferred with Mr. Orwig. The red documents are the
23 insurance policies that Little League Baseball produced.
24 Not District 12. And --

25 THE COURT: Are they defendants under

1 reservation of rights?

2 MR. D. BERNSEN: No. They gave these --
3 these policies. And in there --

4 THE COURT: No. But are they defending the
5 case under reservation of rights?

6 MR. D. BERNSEN: They say no. I mean, not
7 that we know of.

8 THE COURT: Okay.

9 MR. D. BERNSEN: They've not said anything.
10 But in these -- in these documents -- and
11 this is something I want to talk to Mr. Stahlnecker
12 about -- is that -- and I'll just pick one of them. On
13 LLB Production 002231, it's got -- that's produced by
14 Little League Baseball. It says, "Named insureds:
15 Little League Baseball, Inc. Business of the named
16 insured: Little League Baseball Administrators."

17 And the motion to dismiss says that they're
18 separate and independent entities, and so we tried to
19 subpoena the underwriting of this. That's something we
20 want to take care of because it appears that they're one
21 in the same, and there are other issues like that
22 throughout. And so, yeah, there's some information
23 specifically with Mr. Stahlnecker -- I want to talk
24 about the production or lack of production that he was
25 in charge with.

1 THE COURT: Well, then -- that's in his
2 official capacity. And he signed the interrogatories in
3 his official capacity. And I'm sure you can -- you'll
4 ask him about a lot of these things. And I'm saying you
5 can take his deposition, but I think it needs to be --
6 you need to tell him, you know, the areas that you want
7 him to -- so he can talk about his discovery responses.
8 That might be one area, you know.

9 MR. D. BERNSEN: That'll be fine.

10 THE COURT: Policies and procedures, history
11 of other -- maybe other things. I don't know. I'm not
12 sure -- I'm sure you-all have a pretty good idea of what
13 you're going to want to ask him anyway.

14 MR. D. BERNSEN: Do you want to say
15 something?

16 My son keeps jumping up and down.

17 I think we can limit the areas, and then if
18 there are other areas that we need to go back --

19 MR. C. BERNSEN: Yeah, Judge. I'm just
20 reluctant -- you know, I feel -- I'm nervous about
21 agreeing to take -- you know, the corporate rep
22 deposition is obviously -- that's an important
23 deposition. And, you know, we just got 20,000 documents
24 plus last week, and we've got -- there are other things
25 going on.

1 So we're going up to Williamsport to take
2 this lady named Samantha Mahaffey who was in charge of
3 their child protection program. And I wanted to take
4 Stahlnecker because, basically -- you know, like, on the
5 internet, it says he was basically in charge of
6 overseeing the child protection program and other safety
7 programs. And so I -- and, you know, he signed the
8 interrogatories. I obviously felt we had a legitimate
9 reason to take his deposition in his individual
10 capacity. And just because, you know, they said, well,
11 he may be our corporate rep so you have to convert this
12 deposition into a corporate rep depo. And I'm like,
13 "We're not ready yet." I mean, we just got -- we just
14 got tens of thousands of documents, and we're still
15 trying to sort through things.

16 I'm just, kind of, nervous -- you know, we
17 need to take this Ms. Mahaffey's deposition.

18 THE COURT: Well --

19 MR. C. BERNSEN: But I'm just nervous
20 converting Mr. Stahlnecker's deposition in -- you know,
21 in less than two and a half weeks to a corporate rep
22 depo.

23 THE COURT: Okay. It sounds like you-all,
24 kind of, have got it scheduled?

25 MR. D. BERNSEN: Yes. We have reservations

1 and everything.

2 THE COURT: Let me -- let me -- again, this
3 is more of a -- 34 years of being a trial lawyer talking
4 more than a judge. The way we used to do it is
5 sometimes you -- if you come across some areas in a
6 deposition that require additional interrogation, I
7 guess is a good word -- 20,000 documents and there's
8 something there -- whatever. You know, you could always
9 hold a deposition open and continue it at another time.
10 Now, you know, that's not ideal because what we want to
11 try to do -- what I think you-all want to try to do is
12 make it a one-shot deal. You'll probably take both of
13 these people's depositions in the same trip and save
14 everybody some money, defense money, and everybody.

15 On the other hand, if there's some surprise
16 or something that comes up and -- and it may be a
17 benefit to the defendant as well, perhaps, to say, well,
18 we'll produce him again in another month or whatever
19 and -- and that gives them 30 days to woodshed him on
20 those additional points -- excuse me -- to allow him to
21 become well-versed in the subject matter.

22 MR. C. BERNSEN: Judge --

23 THE COURT: I guess there are ways you can --
24 that would, perhaps, satisfy Mr. Cade Bernsen's
25 articulated concern. But, hopefully -- I suspect, with

1 Ms. Sanders' help especially, you'll be ready for that
2 deposition. You're going to know what you want to ask.
3 You're going to know -- you've probably already written
4 out your questions, and you can just say I'm going to
5 ask these subject matters right here. And then you're
6 not giving him the questions in advance, but you're
7 giving him the subject matter. He's going to testify
8 about these things.

9 MR. D. BERNSEN: We can do that.

10 THE COURT: And they may say, well, there's
11 something he doesn't have any knowledge of and there's
12 another witness. And we may need to get that out there
13 and say -- maybe there's another person that needs to be
14 deposed, and you get a third deposition while you're up
15 there in Pennsylvania.

16 MR. D. BERNSEN: We can do that, your
17 Honor --

18 THE COURT: It just clarifies it.

19 Mr. Villarreal, do you want to say something,
20 I think?

21 MR. VILLARREAL: I think the Court has ruled
22 on the matter. So nothing --

23 THE COURT: That's fine.

24 MR. D. BERNSEN: If we need additional time
25 up there -- I think the rules are seven hours, I think,

1 for a deposition.

2 MS. LAINE: The -- I believe the rule says
3 seven hours.

4 THE COURT: Yeah. Now, what we don't want,
5 of course, is to wear the man out where he's exhausted
6 and, you know, even another pot of coffee doesn't help.
7 And you're just, you know -- although, sometimes people
8 like to just soldier on through and get it over with so
9 you don't get a chance to go back home and reload.

10 MR. D. BERNSEN: That's right.

11 THE COURT: I mean, time deadlines work both
12 ways, you know.

13 MR. DUKE: We're happy -- I think seven hours
14 is probably more than sufficient for a deposition -- for
15 almost any deposition, in my experience, but I've never
16 been one to, like, cut the clock off if they have, like,
17 30 more minutes.

18 MR. D. BERNSEN: There you go.

19 THE COURT: And a lot of that, too -- I mean,
20 if you have a lawyer who is just wasting everybody's
21 time or is just out of control -- but if someone's being
22 pretty proficient and focused and getting the job done
23 and have a little extra --

24 I appreciate, Mr. Duke, your position on that
25 because that's --

1 MR. DUKE: I mean, I know the rules are there
2 for the rules, but I think they are also there to guide
3 counsel and -- we'll see how the day's going. If
4 it's --

5 THE COURT: And let me say -- and I used it a
6 couple of times -- I won't mention the lawyer. No one
7 in this room. I don't even think he has a license
8 anymore. But our local rules have that discovery
9 hotline, and we assign a magistrate judge to be on call
10 each month. And I've used that right in the middle of a
11 deposition and got -- got to what was right pretty
12 quickly. You know, you might take an extra long lunch
13 so the magistrate judge can set up. But, I think if
14 y'all are in the middle of a deposition and y'all run --
15 somebody runs into a problem, on either side, can use
16 that. So you might want to take your rule book with you
17 with your local rules and --

18 Yes, Mr. Villarreal.

19 MR. VILLARREAL: Judge, if I may just
20 interrupt for a second. Mr. Duke has a hard deadline to
21 be in Houston, and he asked if he could request to be
22 excused.

23 THE COURT: Yes. That will be fine.

24 And, Mr. Villarreal, why don't you get next
25 to the microphone so we can hear you a little bit better

1 in case. And we haven't forgotten you online.

2 MR. DUKE: I was here just in case of
3 technical difficulties. I ended up talking more than I
4 had hoped. This is my chance to shut up.

5 Thank you, your Honor.

6 THE COURT: Certainly. I think we've
7 probably dealt with a lot of things at the 30,000-foot
8 level. So we're going to, essentially, have you -- have
9 the documents tied to requests for production. We're
10 going to have this deposition as a corporate rep
11 deposition.

12 MR. D. BERNSEN: We'll provide the subjects.

13 THE COURT: Pardon?

14 MR. D. BERNSEN: We'll provide the subject
15 areas.

16 THE COURT: Yes. And then I think we said
17 ten days to do the production of documents.

18 We've talked about -- I guess we're going to
19 need to get down now and go back and start -- and get
20 our drill bit going and drill down a little bit on
21 specific requests for production.

22 Is that -- that's what we're dealing with
23 now. I've heard that -- and Mr. Duke expressed it --
24 that they have attempted to modify their objections, but
25 they still have some. We've got to have some way of

1 going through it.

2 So which ones are -- I'm not going to ask
3 which ones -- which ones are still left that need a
4 little examination by the Court?

5 MR. C. BERNSEN: May I sit, your Honor, so I
6 could have my stuff here?

7 THE COURT: Yes, of course.

8 I've got -- let me just help a little bit
9 here. Reservation of rights. As I understand it, the
10 amended response, which is Document 80, removed the
11 reservation of rights. General objections -- again,
12 Document 80, amended response, removed the general
13 objections.

14 MR. C. BERNSEN: May I approach, your Honor?

15 THE COURT: All right. Do you want to give
16 the other side a copy, too?

17 Thank you.

18 Mr. Cade Bernsen has handed me -- I think I
19 already had this -- defendant Little League Baseball's
20 amended objections and requests to plaintiffs' third
21 requests for production. I think that's on Exhibit 5 to
22 Document 80.

23 Is that correct, Mr. Cade Bernsen?

24 MR. C. BERNSEN: Probably so.

25 MR. D. BERNSEN: We think so, your Honor.

1 MR. C. BERNSEN: I don't know. They can look
2 that up.

3 THE COURT: Hold on. I have it tagged
4 already. It is --

5 MR. C. BERNSEN: So I can --

6 THE COURT: That's exactly what it is.
7 Uh-huh.

8 MR. C. BERNSEN: So I guess what I'll do
9 is -- I'm prepared to drill down on -- I think this
10 isn't an exclusive list, but, you know, this has been a
11 very fluid moving situation. And I think these were
12 filed -- September 6th is two days ago. So, anyway, I
13 went through them yesterday, and I found some ones that
14 we believe are still -- still problematic, and so I can
15 bring those to your attention now.

16 THE COURT: All right. I think that's,
17 perhaps, the way to do it. And I've been also advised
18 that I have Mr. -- Judge Heartfield has a little problem
19 with his courtroom. He's going to need to borrow my
20 courtroom. I'm more than happy -- I always welcome him
21 back. We're going to need to, kind of --

22 MR. C. BERNSEN: Plow.

23 THE COURT: -- plow through it, okay?

24 MR. C. BERNSEN: Yes, sir.

25 MR. VILLARREAL: Judge, if I may?

1 THE COURT: Yes.

2 MR. VILLARREAL: Just for the Court to note,
3 the responses and objections are different per
4 defendant, meaning there's -- they were for both
5 Little League Baseball and for District 12, and the
6 responses are different.

7 THE COURT: Where are District 12's?

8 MR. VILLARREAL: It was also an exhibit to
9 our --

10 THE COURT: Document 80?

11 MR. VILLARREAL: To Document 80.

12 MR. HARPER: Exhibit 4.

13 MR. VILLARREAL: Exhibit 4.

14 MR. C. BERNSEN: Yeah. That may be so.

15 I'm -- this is the document I wanted to talk to the
16 Court about.

17 THE COURT: That's a good point. Here it is.
18 Exhibit 4 to Document 80, defendant Little League
19 Baseball, Inc.'s -- wait a minute now. That's
20 objections to the second requests for production.

21 But you're saying there was another entity?

22 MR. VILLARREAL: Yes, sir.

23 THE COURT: What was that other entity?

24 MR. VILLARREAL: District 12.

25 MR. HARPER: Exhibit 3.

1 THE COURT: Exhibit 3?

2 MR. HARPER: Yes.

3 THE COURT: Thank you very much.

4 MR. VILLARREAL: Just to put us in context,
5 there are disputes over two sets of RFPs to -- directed
6 to two different defendants. So it's the second set of
7 RFPs and third set of RFPs directed to both
8 Little League International and District 12.

9 THE COURT: Got it. Okay. Good. I
10 appreciate you clarifying that.

11 So which ones do you want to talk about?

12 MR. C. BERNSEN: The one that's before you,
13 Exhibit 5, Document 80.

14 THE COURT: Uh-huh.

15 MR. C. BERNSEN: If you go to No. 18 --

16 THE COURT: Okay. Let me go to 18.

17 MR. C. BERNSEN: And, Judge, our -- you know,
18 our position is that they've waived -- these objections
19 that sit here -- the current ones -- the current
20 iteration of objections have been waived because
21 throughout this entire time they've -- they've been just
22 boilerplate unfounded bogus objections. And it's my
23 understanding that if you do that, that you waive your
24 objections. Any valid objections would be waived. So
25 our stance is that, basically, these handful of requests

1 that we're about to go over, their objections are
2 waived, and they should have to produce the documents.

3 But, you know, for instance, No. 18 is
4 just -- some of these -- again, for the sake of the
5 Court, I can't -- literally can't go through all of them
6 that are frustrating us just because I'm trying to
7 conscientious of your time. But, like, No. 18 --
8 anyway, this is submissions of the Little League A
9 Safety Awareness Program. That's something you'll come
10 to learn about in this case. It's called ASAP. That's
11 a safety program that these local leagues are supposed
12 to have. It's supposed to include, you know,
13 protections --

14 THE COURT: Let me ask this question -- and
15 this may help clarify -- and I also make this
16 observation, and, perhaps, it does reveal a certain
17 ignorance that I have about the file itself -- the
18 case -- any submissions -- overly broad. What does it
19 mean by the term "submissions"?

20 MR. C. BERNSEN: Again, Judge, that's a term
21 of art. All these words that I used in here come from
22 Little League. That's a term of art that the local --

23 THE COURT: What are you thinking you're
24 wanting is what I'm driving at?

25 MR. C. BERNSEN: I'll explain. So each local

1 league is required to submit -- it is a submission -- of
2 an ASAP plan to Little League International each and
3 every year. And so, again, this question is all of the
4 submissions of Evadale Little League ASAP plans to
5 Little League International over the last ten years,
6 which is -- they know exactly what -- Mr. Stahlnecker
7 knows exactly what I'm talking about.

8 THE COURT: Excuse me just a minute. E-L-L
9 is Evadale Little League?

10 MR. C. BERNSEN: An abbreviation for
11 Evadale Little League.

12 THE COURT: Okay. I understand this now. So
13 you're not asking for every submission for every
14 Little League organization across the state or the
15 country?

16 MR. C. BERNSEN: No, sir.

17 THE COURT: We're just talking about the ten
18 that Evadale filed?

19 MR. C. BERNSEN: Yes, your Honor. That's the
20 one where the coach and the president is the child
21 molester. So we're, like, okay, from ten years from
22 today --

23 THE COURT: The alleged child --

24 MR. C. BERNSEN: The alleged. Sorry. So
25 we're asking for ten years of any submissions from ELL

1 to Little League.

2 THE COURT: Do these submissions show -- we
3 think we had a violation or we don't or we're all clear?

4 MR. C. BERNSEN: What it is, is that -- each
5 local league across the country is supposed to -- is
6 required to develop what's called an ASAP plan. And
7 there's topics that are to be addressed in there like --
8 including safety on the field. There is a list of 15
9 requirements. They're supposed to also have, according
10 to their policies, child protection information in there
11 as well.

12 And so we're -- we're asking Little League
13 International to give us every submission for the last
14 ten years of Evadale Little League. And then, you know,
15 at the end of their objection, your Honor -- which it's
16 not overly broad. It's not irrelevant. And then they
17 say, "Defendant is withholding documents based on the
18 foregoing objection."

19 THE COURT: Right.

20 MR. C. BERNSEN: And then it says, "Defendant
21 will produce all relevant documents within its
22 possession." So we're just -- this one should not even
23 be a question. Like give us the Evadale Little League
24 submissions.

25 THE COURT: Let me hear from the defendant on

1 this one.

2 MR. HARPER: Your Honor, I think -- this is
3 one of these -- and I'm not blaming them. I want to be
4 very clear. This is not to be critical in any way
5 because it's taken us a while to get them documents,
6 which is for reasons we explained. But we have -- as
7 they are now defining this, we'd agree to give them
8 that. There's no problem with that at all.

9 THE COURT: Okay.

10 MR. HARPER: We read the request as
11 different. So if they're saying that they are defining
12 "submission" in that way, easy to do, and happy to
13 provide it to them.

14 THE COURT: Well -- okay. Before
15 Mr. David Bernsen speaks, I go back -- the more
16 I'm on this job, the more I go back to 34 years of
17 dealing with it. And what happened in my world --
18 like, if I had a request like this and I filed overly
19 broad, I'm sympathetic to what the defendant is saying.
20 Any submission, overly broad, but then I'd have a
21 conversation or usually the other side would say, "What
22 are you doing with that objection there?" And you just
23 say, "Well, what do you want, man?" "Well I want the
24 Evadale -- what they filed -- the annual report they
25 filed." "Oh, okay." Now we've defined what we're

1 talking about.

2 And if you're willing to do that, then --
3 now -- and there's an understanding that maybe it didn't
4 exist before -- in a perfect world, all this would have
5 been worked out and the duty to consult with each other
6 before filing a motion to compel and all that, but we're
7 not going to go haggle over all of that formality.
8 Let's just deal -- if he can produce it, then he'll
9 produce it.

10 MR. C. BERNSEN: And, Judge, may I?

11 THE COURT: Yes.

12 MR. C. BERNSEN: Just to be fair, every --
13 like, if they had talked to their clients -- I wrote
14 these discovery requests. This is their terminology.
15 We -- the submissions -- that is a term of art that they
16 use. So -- these things -- yes, it is. Yes, it is. I
17 can show it to you, Mr. Harper.

18 THE COURT: Now, let's don't --

19 MR. C. BERNSEN: All these terms are their
20 terms --

21 THE COURT: Hold on, Mr. Cade Bernsen. Let's
22 don't get into an argument between counsel. Just direct
23 everything to me. I've already decided. These
24 submissions -- these annual filings for the last ten
25 years are going to be produced.

1 And that can be done pretty quickly, correct?

2 MR. HARPER: I'm not sure that they have not
3 already been produced. To the extent they have not
4 been, we will make sure they are out the door
5 certainly -- I know we already picked ten days before.
6 If we can keep that time frame, that will be easier --

7 THE COURT: In about ten days you can get
8 that produced? Because he has a deposition in
9 Pennsylvania coming up in about three weeks, I think.

10 MR. D. BERNSEN: We need those documents
11 before we take the deposition of Ms. Mahaffey.

12 THE COURT: All right. I think then -- are
13 we squared away on this one?

14 MR. D. BERNSEN: Yes, sir. I'll say this --
15 I've been on the screen before with the defendant and
16 with clients -- they go from one end of the spectrum to
17 the other spectrum, and you know -- you and I, your
18 Honor, we know that. They have -- Little League
19 Baseball has a data center that has everything at their
20 fingertip. And one of the -- we'll be back, but they
21 have a list of the players, the managers -- and there's
22 testimony and documents to show that.

23 And they'll be a submission -- ASAP, which is
24 required by each Little League --

25 THE COURT: Okay.

1 MR. D. BERNSEN: -- throughout the country.

2 And it is by Little League. And --

3 THE COURT: So pull that out and get it to
4 you.

5 MR. D. BERNSEN: A call could be made to the
6 data center and say, "I need" and it's done.

7 THE COURT: Right. Well, I understand.
8 We're going to -- I think we can agree on this one.
9 That's going to be produced. And I suspect there will
10 be some more we'll go through. And probably ten days is
11 probably a fair amount of time to supplement.

12 MR. D. BERNSEN: That's fine.

13 THE COURT: Are we clear on what we're doing
14 on No. 18?

15 MR. D. BERNSEN: Yes.

16 MR. C. BERNSEN: Yes, sir.

17 THE COURT: And then, obviously, if they
18 produce documents to 18, they'll identify them as such.
19 If you feel that they haven't, I suppose you'll be
20 filing a motion that says something else, but -- and
21 that specific request -- that -- the specific issue will
22 probably be dealt with by a magistrate judge at this
23 point.

24 What's the next one on the agenda?

25 MR. C. BERNSEN: No. 19, your Honor.

1 THE COURT: Okay.

2 MR. C. BERNSEN: This is, you know, any
3 communication between Little League Baseball and
4 District 12 regarding ASAP plans for the last ten years.
5 You know, they say in there they object, and they say
6 that they're withholding relevant -- withholding
7 irrelevant communications based on the foregoing
8 objections. And then they say it's attorney-client,
9 work-product. I'm not exactly sure how any of that
10 would be attorney-client or work-product.

11 THE COURT: Okay.

12 MR. C. BERNSEN: I don't know. We think that
13 it's a simple request. It's not -- the ten -- like I
14 said, for all these, the ten years is not too much
15 considering this case and the facts of it. And we just
16 want them to produce those documents.

17 MR. HARPER: Your Honor, the issue here is
18 that they're no longer just asking for stuff regarding
19 Evadale Little League. They're now asking for
20 everything regarding to District 12 --

21 MR. D. BERNSEN: I can't hear him.

22 THE COURT: Can you speak a little closer to
23 your microphone?

24 MR. HARPER: Judge, I'm sorry. I don't know
25 what's wrong. I can barely hear you, and you can barely

1 hear me. I'm sorry.

2 What I was saying is the issue here is that
3 they're not just asking for stuff with Evadale. They're
4 asking for every, you know, one that was communicated
5 within District 12, which includes a whole bunch.
6 They're not just asking for the plans. What they're
7 wanting here or what this would call for here is every
8 plan for everyone within District 12. Every draft of
9 it. Every communication back and forth about -- now
10 they're not just limiting it to what they had earlier
11 defined as, you know, "submissions". They're now
12 seeking every text, every letter. It's a lot of stuff.
13 We're happy to give them everything regarding Evadale.

14 MR. D. BERNSEN: I can't hear him.

15 THE COURT: Okay.

16 MR. VILLARREAL: I can hear him.

17 MR. C. BERNSEN: I understand what he's
18 saying. I can respond to that.

19 THE COURT: Well, let me say, clearly, if
20 you've got documents that are from an attorney to a
21 client or were produced as work product by an attorney,
22 those are going to be privileged, and the Court is going
23 to respect those privileges. If there's an issue about
24 that and you want that to be sent to the Court for an in
25 camera inspection, I invite you to do that. Obviously,

1 personal sensitive information regarding third parties,
2 including minors -- if there's some identifying
3 information, that may well need to be protected as well,
4 but that would be by, I think, redaction as opposed to
5 not -- just not producing the documents.

6 Drafts? Well, I guess the question is --
7 it's almost hard to imagine that Little League Baseball
8 would send a draft document to District 12. It seems
9 like they'd probably send them their finished product.
10 And, really, I don't read it as asking for drafts of any
11 communication exchanged between LLB and District 12. I
12 mean, I can understand -- the need to want to be careful
13 about that. I'm going to say if there are any drafts of
14 those correspondence, that does not need to be produced
15 because even the -- the request for production itself
16 just asks for matters that were exchanged between LLB
17 and District 12. So -- that would exclude drafts. So
18 if it's exchanged, then I think it's out there.

19 And I might add, too, if it's already been
20 exchanged -- unless you can show me, like, an attorney
21 who is representing, say, District 12 sent a letter to
22 District 12, that would be under the attorney-client
23 privilege. But if the attorney's not representing
24 District 12 but representing LLB, well, then they may
25 well have waived that attorney-client privilege. So

1 there may be some letters that come with the lawyer's
2 letterhead on it that still would be communication that
3 would be subject to being produced in this case. I
4 don't know if that's the case or not.

5 MR. D. BERNSEN: Well, just have them list
6 them. If they're keeping any by privilege -- I can't
7 imagine any privileged material. What happened in this
8 is that the ASAP plan evolved -- and this is for the
9 Court's information -- 2017 to '18 because of the public
10 outcry for all of the children being -- you know, the
11 Nassar case in Michigan. The ASAP plan in Little League
12 Baseball -- they were supposed to have -- part of the
13 ASAP plan -- every league is supposed to have it -- is,
14 you know, the safety -- whether or not there's, you
15 know, broken stands or whatever and concession stands,
16 washing hands, whatever.

17 They were specifically supposed to put, in
18 our opinion -- in our opinion, a list of child abuse
19 grooming, what to look for, how to -- how to protect
20 children, educate parents. And they -- we don't think
21 they did it. In fact, we know they didn't. So there
22 may be drafts going up from 12, but ultimately
23 Little League Baseball had the ultimate and final
24 control on the ASAP plan. And to get chartered to even
25 play Little League, you had to have an ASAP plan

1 approved by Little League Baseball. So I don't know
2 what he's talking about drafts. But if there is a
3 draft, it would be from District 12 or somebody going up
4 to Little League. But, you know, if -- all we want
5 right now is for them to produce the documents and
6 identify what documents they're producing to this
7 request. I think we're good. I think we're already
8 there.

9 THE COURT: Well -- okay. Drafts that were
10 not actually exchanged -- now, if they did send a
11 draft -- we're sending you a draft of what we're
12 considering, give us your thoughts. I suppose that
13 would be something -- again, that's actually been
14 exchanged.

15 MR. D. BERNSEN: Yes.

16 THE COURT: But, you know, maybe what they
17 actually sent to District 12 was the third draft and --
18 I'm not going to go back through draft one and draft
19 two.

20 MR. D. BERNSEN: No.

21 THE COURT: That burdens many things, I can
22 say. So -- but if it is communication actually
23 exchanged, then I'm going to allow it, but now if
24 there's attorney-client, work-product -- if it's truly
25 that, then produce that for an in camera inspection to

1 me, and I'll look at it and I'll decide whether it gets
2 produced or not.

3 Does that sound appropriate?

4 MR. HARPER: I just want to make sure I
5 understand your ruling, your Honor.

6 MR. D. BERNSEN: Yes, your Honor.

7 MR. HARPER: And, obviously, it's
8 appropriate -- we'll do whatever. But you want the ones
9 for every single league within District 12 and not just
10 Evadale; is that correct?

11 THE COURT: No. I think -- just for
12 District 12, right?

13 MR. C. BERNSEN: District 12. Yes.
14 District 12 is the defendant in this case. And so we
15 want to see -- it's not just Evadale. District 12 is a
16 defendant in this case, and we want to see all ASAP
17 plans --

18 THE COURT: Okay. Help me out here --

19 MR. C. BERNSEN: The request is very
20 specific.

21 THE COURT: Help me out here. District 12 is
22 our area that encompasses Evadale Little League and as
23 well as some other area Little Leagues?

24 MR. C. BERNSEN: Yes, your Honor.

25 THE COURT: So is it your concern that maybe

1 District 12 is having a blind eye to what's happening in
2 their district? Is that what you're, kind of, concerned
3 about?

4 MR. C. BERNSEN: Absolutely.

5 THE COURT: Doesn't relate to a claim or
6 defense or maybe they're shuffling coaches back around
7 or something like that.

8 MR. D. BERNSEN: According to the defendants,
9 they're separate entities. I don't know. We disagree.
10 And I think it's going to show -- but there -- so I'm
11 not sure how there would be any privileged material
12 going back and forth.

13 THE COURT: Well --

14 MR. D. BERNSEN: But what we want is the
15 exchange between Little League and defendant
16 District 12.

17 THE COURT: How many -- I'm just curious.
18 How many Little Leagues are there in District 12
19 approximately?

20 MR. C. BERNSEN: Twelve to 14.

21 MR. HARPER: Twelve.

22 THE COURT: Well, 12 -- I thought you were
23 going to say 1,200 or something.

24 MR. C. BERNSEN: No.

25 THE COURT: If it's 12, I feel comfortable

1 with that. I do. I don't think that's overly
2 burdensome. Although, that's not really -- I'm going to
3 allow that, but --

4 MR. HARPER: Understood.

5 THE COURT: So that's my ruling.

6 MR. VILLARREAL: Judge, a quick
7 clarification.

8 THE COURT: Yes.

9 MR. VILLARREAL: Isaac here.

10 THE COURT: Yes.

11 MR. VILLARREAL: In my role as an associate,
12 I -- I'm part of the team that recollects the --

13 THE COURT: Of course.

14 MR. VILLARREAL: As to RFP 19, is the Court
15 ordering to produce the safety -- the ASAP plans
16 themselves or any communication, any e-mail that has the
17 word "ASAP" in it?

18 THE COURT: Regarding ASAP safety plans.
19 Yeah. I mean, I think the submissions that was in
20 No. 18. No. 19 --

21 MR. VILLARREAL: Yes.

22 THE COURT: If Little League Baseball is
23 sending to District 12 e-mails, letters, whatever to --
24 regarding the ASAP safety plan -- and it could be,
25 "Enclosed please find our ASAP plan we want you to fill

1 out" or whatever. I don't know what it says. But that
2 communication pertaining to the ASAP safety plan, that's
3 what you need to look for.

4 MR. D. BERNSEN: With attachments.

5 THE COURT: Right. If there's an e-mail with
6 an attachment. But it seems like you ought to be able
7 to get -- you're just looking for those 12 that
8 pertain -- that go to District 12.

9 MR. VILLARREAL: Well -- correct. But -- and
10 I suspect, Judge, that there's going to be
11 potentially -- I need to clarify -- but hundreds of
12 documents because there could be lots of e-mails during
13 the last ten years that at least mention ASAP. Not
14 whether an attachment to an e-mail is an ASAP plan, but
15 any -- this request is asking for anything, relevant or
16 not, to the program that's called ASAP. Not just the
17 submissions themselves, but it's asking for everything.

18 THE COURT: Well, I understand that. But
19 what we're really -- the objection, as I read your
20 amended response, is not -- really you're talking about
21 any -- especially -- I know the Beaumont Court of
22 Appeals, which was stayed, has ruled that any request
23 that's any and all is overly broad. The objection, as I
24 read it, is not one of overbreadth -- being overly
25 broad. And so I don't think that would be a valid

1 objection to make now. That's been withdrawn. That's
2 not in this amended response.

3 I think here they're looking for -- it
4 breaches attorney-client privilege, work-product, and
5 sensitive and personal with identifying information.
6 That's the objection that's before me. So I don't think
7 the fact that there might be hundreds of documents --
8 well, I don't think that's really before me. Besides,
9 if it were a matter of being overly broad or oppressive
10 or harassing or some how or another excessive, I would
11 overrule those objections.

12 MR. VILLARREAL: Yes, your Honor. I just
13 wanted to clarify what the Court is ordering.

14 THE COURT: Yeah. Go ahead. That's it.
15 Next.

16 MR. C. BERNSEN: No. 22. Judge -- your
17 Honor, this is -- what we've established is that
18 Little League sends monthly district staff bulletins to
19 all of the district administrators, which would be to
20 District 12 in this case. And so -- and we know they
21 send one per month. This is, like, a newsletter that's,
22 like, one to two pages, okay? And so we've asked for --
23 and it's broad. I understand that. But, basically,
24 like, we have -- they've produced maybe -- I don't
25 know -- I'd say maybe a dozen. We've asked for five

1 years' worth, so there should be 1, you know, times 12
2 times 5. And they produced -- I don't know -- maybe a
3 dozen or so, more or less.

4 And, basically, it's, like, Little League
5 International saying, okay, district administrators,
6 this is the important stuff we're going to want y'all to
7 do. We have the tournament. We have fundraising. We
8 have this. We have this. Child protection. ASAP
9 plans. Those are mentioned in there, too. So we want
10 them to produce -- basically, they have just gone
11 through -- they say, well, not all these bulletins are
12 relevant. And defendant -- we're withholding irrelevant
13 communications based on the foregoing.

14 And what I would say is says who? You're
15 saying they're irrelevant, but, you know, we need to see
16 them. I'm not going to take the defendants' word that
17 they're irrelevant. We believe it is a reasonable
18 request. We want to see what Little League
19 International is telling their district administrators,
20 you know, every month about what the important things
21 that are going on in Little League -- you know, rules,
22 regulations, policies, and all these matters like that.
23 We don't think that that's -- that it's inappropriate at
24 all. And so -- anyway -- but they're basically just
25 saying --

1 THE COURT: Well, as you spoke, I had thought
2 that the more you were speaking, the more you were
3 actually sounding like former President Ronald Reagan,
4 trust but verify.

5 MR. C. BERNSEN: Trust but verify.

6 THE COURT: I didn't realize you were such a
7 fan. But -- anyway, staff bulletin. I mean, I don't
8 know. We're talking about -- what are these, like,
9 monthly bulletins?

10 MR. D. BERNSEN: Yes. It's monthly
11 bulletins. It's produced during the ordinary course of
12 business at Little League Baseball. It's dispensed over
13 the country.

14 THE COURT: Some may have bearing on the ASAP
15 program. Others may be just talking about balls and
16 strikes and new bats that can be used by the kids and
17 things like that, which I -- would be nice to get back
18 to just that. But, you know --

19 MR. D. BERNSEN: We think they're all
20 relevant, your Honor, for this reason -- and counsel has
21 said -- he was nodding yes, yes to balls and strikes.
22 Is withholding irrelevant? The absence of instructions
23 about ASAP is telling, as well as something that's
24 addressing ASAP. If during the time period of 2018,
25 they've got all this correspondence going about the

1 sexual rape and molestation of these children, they've
2 got legislation, which, believe or not, was actually
3 bipartisan in Washington about here -- here is this
4 legislation that any organization that has -- involves
5 children, you have to do X, Y, and Z. And if they've
6 got one ASAP here and one ASAP there and there's a hole,
7 and they're talking about raising money or they're
8 talking about concession stands or they're talking about
9 clean bathrooms and making sure they don't wear the arms
10 out, then there's an absence in the face of a growing
11 catastrophe nationwide.

12 And so, yeah, it's relevant. So for the
13 defendants to say, oh, it's irrelevant. Says who? It
14 is limited in time. It is limited in scope. It's
15 created and produced in the ordinary course of business,
16 and we shouldn't even be dealing with this. This should
17 have been produced early on.

18 THE COURT: And only any staff bulletins that
19 went to District 12, correct?

20 MR. C. BERNSEN: Yes.

21 THE COURT: Limited -- because the way the
22 production is -- it says, "any district staff
23 bulletins." There may be -- I don't know -- hundreds of
24 districts all across the country.

25 MR. C. BERNSEN: Yes. And --

1 THE COURT: I think we need to limit it to
2 just what's going to District 12.

3 MR. C. BERNSEN: That's -- I mean, it's our
4 understanding, I believe, based on testimony -- we've
5 taken a couple of depositions -- that you have
6 Little League in Williamsport that sends out bulletins
7 to all the -- so District 12 should have gotten every
8 bulletin that --

9 THE COURT: As long as we're dealing with
10 just District 12. If there are different bulletins that
11 go to, hey, folks in the northeast of the United States,
12 that gets too much.

13 MR. D. BERNSEN: District 12. District 12.

14 THE COURT: It will be like -- is it a
15 monthly staff -- is that what it is?

16 MR. C. BERNSEN: Yes, your Honor.

17 MR. HARPER: There will be some special ones
18 in there as well. Judge, if they're that important to
19 them, we can get it.

20 THE COURT: Well, again, that's why I, kind
21 of, started off my conference today with a -- I didn't
22 want to sound too preachy, but I go back to what I
23 learned is to be -- the wisdom of Judge Fisher and
24 Judge Parker. And as part of the tradition -- as part
25 of the rules of the Eastern District -- and I know this

1 may be different than other districts, but -- around the
2 country, but that's the Eastern District. And it talks
3 about information that deserves to be considered, all
4 right? Likely to have an influence on the effect.

5 I heard an argument made that it's not -- if
6 there are 12 times 5, that's 60 bulletins, if my math is
7 correct. And you want to point out to the jury that
8 only two of the 60 dealt with this issue. And you're
9 using it to create an adverse inference that shows that
10 they were not on top of this dealing with it. Of course
11 that might be something the district might say in their
12 defense that -- well, don't tag us because the boys
13 upstairs weren't telling us about this. But, you know,
14 that's a strategy call, but it could -- either way -- I
15 can see both sides arguing it. And -- but it could have
16 an influence. I think -- and we're talking about 60
17 documents, which is not going to break the bank. I'm
18 inclined -- I'm going to rule that needs to be produced.

19 MR. C. BERNSEN: Thank you, your Honor.

20 THE COURT: So what else do we have?

21 MR. C. BERNSEN: Twenty-four.

22 MR. VILLARREAL: Just for the record, your
23 Honor, they are not necessarily monthly. Just for the
24 record.

25 THE COURT: You didn't produce 12 -- I got

1 it. Okay. However many.

2 Next -- and, by the way, just because it's
3 being produced, whether or not it becomes relevant or
4 otherwise meets the rules of evidence -- it's different
5 than the rules of procedure -- for admissibility, that
6 may be a different hurdle we'll deal with another day.

7 MR. D. BERNSEN: Absolutely.

8 THE COURT: Okay.

9 MR. D. BERNSEN: Absolutely.

10 MR. C. BERNSEN: Absolutely, Judge.

11 It says -- 24 -- basically, produce safety
12 audits, safety reviews, safety studies conducted on
13 behalf of Little League over ten years regarding child
14 abuse, including sexual abuse. And this is very
15 important because -- when I'm -- organizations, you
16 know, like Little League that hold themselves out as
17 gold standard, which they do -- you know, when you're in
18 charge of millions of children and you have a child
19 protection plan, the good organizations, Boy Scouts and
20 Boys & Girls Club of America, you know, you have audits
21 and -- safety audits. People to come and poke holes in
22 your safety plan. Tell us how, you know, our -- our
23 safety plan -- the good parts, tell us the weaknesses,
24 and it is supposed to be an ever-evolving process
25 because you're trying to protect children from child

1 predators. I mean, it's a big deal.

2 And so we're asking for ten years of any
3 type of safety audits conducted by or on behalf of
4 Little League concerning the issue of child abuse,
5 including sexual abuse.

6 THE COURT: Okay.

7 MR. C. BERNSEN: And their objection is --
8 they say they're withholding -- it's irrelevant, so
9 temporally attenuated -- I guess they're trying to say
10 it's too long in time, and then we'll produce five years
11 of records. And so we think that ten years is
12 absolutely appropriate because what we're showing is,
13 Judge, and the evidence is going to show is this has
14 happened before. This is not the first time Little
15 League coaches, presidents, and district staff people
16 have molested their players. We're already getting
17 evidence of that. This has happened for a number of
18 years at a number of different places, and they know
19 that. And that's very important for this case, and so
20 what we want to see -- and it has been happening for
21 decades.

22 THE COURT: All right. Let me -- let me come
23 in here and say, again, I guess this goes back to the
24 34 years before I assumed this role. But ten years is,
25 kind of, a -- there is no rule on it. The ten-year rule

1 on it or anything. Most lawyers -- and the rule, you
2 know, it talks about what reasonable lawyers would do --
3 the local rule. Even with some lawyers who might be a
4 little cranky and ornery from time to time, they usually
5 agree to give up medical records on their clients for
6 ten years. I mean, ten years is kind of like -- like
7 the gold standard or something.

8 And then the question is: Do you have a need
9 to sometimes go back further? Sometimes you do. Like
10 in personal injury, what if somebody had back surgery
11 12 years ago. Well, you might want to know that. So
12 the ten-year rule might not be enough. You might need
13 to go back 20 years or something. A whole lifetime?
14 But it's a -- all a matter of degree.

15 I think ten years -- the difference between
16 five years and ten years, that doesn't hit my button. I
17 mean, I'm okay with producing ten years. If you can
18 produce ten -- now, if you were to say go back 50 years
19 or 30 years, somehow or another the scale starts to,
20 kind of, swing the other way. So I know -- I mean, we
21 have ten years on several others. I'm inclined to go
22 along with ten years. Now, unless there is just some
23 sort of extremely valid reason why -- something less,
24 which -- I'm okay with ten years. What I'm more
25 concerned about is are we -- there's an overly broad --

1 is there something about safety audits, safety reviews,
2 or safety studies -- now, I don't know if that's some
3 term of art. I mean, safety studies, what is that?
4 Some article some guy reads in Newsweek magazine or
5 something? I mean, is that a study, or is that what --
6 is that an issue?

7 And I guess I want to hear from the defendant
8 or -- are these -- I hate to use the word "term of art,"
9 but safety audits, safety reviews, and safety studies --
10 do we know what we're talking about there?

11 MR. VILLARREAL: Geoff, do you want to
12 comment on that?

13 THE COURT: Go ahead. Go ahead. Yes,
14 Mr. Villarreal.

15 MR. VILLARREAL: Oh, I thought Geoff was
16 going to comment.

17 MR. HARPER: It's Isaac for that one.

18 MR. VILLARREAL: Yeah. Okay. But I can
19 comment on that.

20 It is not a term of art, at least to our
21 knowledge. Little League does not define "safety
22 audits, safety reviews, or safety studies." And if it
23 does, then plaintiffs have not identified the document
24 that defines or at least uses that word or those words
25 to -- for us to know what they exactly are looking for.

1 THE COURT: Let me ask you this: Is there
2 some -- okay. I'm getting a flavor of the case. There
3 are ASAP procedures. There are policies against
4 sexually abusing children, teenagers, whatever they
5 were, minors. Are there any documents -- and I don't
6 know what you call them -- an audit, a review, or
7 something -- that LLB does to see if these policies are
8 being enforced or whether there have been some
9 violations? That's my question. That might be what an
10 audit is or review or study. Do you know?

11 MR. VILLARREAL: Your Honor, I cannot
12 disclose the privileged information that we have
13 discussed with our clients, but we have made a very
14 reasonable collection of documents. And we have
15 produced a substantial amount of documents. I have to
16 review those again to see if we have already produced
17 the studies -- some type of studies -- because they
18 don't define it right -- about -- about child safety and
19 child abuse. But I -- we will need to confer, again,
20 with the client to just double check.

21 THE COURT: Well, if there are -- I don't
22 want to mince words -- but, I mean, if you've got
23 something that shows we went back and we checked
24 District 12 and we found internally that, you know, the
25 policy wasn't being -- it wouldn't be District 12. It

1 would be LLB. Our policies were not being enforced
2 consistently. Some people were lackadaisical about it.
3 Other people weren't. If you have anything like that,
4 that is some sort of internal -- I'm going to use the
5 word "audit". I don't know any other word to use.
6 Something that says that. I think that might be
7 important.

8 MR. VILLARREAL: And, Judge, can we limit
9 that request then to audits as it concerns District 12?

10 MR. D. BERNSEN: No.

11 MR. C. BERNSEN: No.

12 MR. D. BERNSEN: Your Honor, let me -- may
13 I -- no. I'm sorry. I apologize. Your Honor,
14 herein -- herein goes to the heart of it, this issue,
15 and I'm -- these are very talented -- very talented
16 attorneys.

17 THE COURT: No question.

18 MR. D. BERNSEN: There is this drumbeat
19 nationally of abuse -- of abuse of babies and children
20 that are being victimized by youth Catholic churches,
21 Boy Scouts, and Little League -- in sports, generally.
22 Generally, it's everything. And there is this drumbeat
23 across this country that drove Congress of the
24 United States, both democrats and republicans, to come
25 together and say we have to stop it. If any -- any

1 organizations, especially one that holds themselves out
2 to be gold standard, they're going to be looking at --
3 we hear this. We know this. We've got lobbyists. We
4 have Google alerts that are talking about it. How do we
5 protect our players? How do we protect our little boys
6 and girls who have that -- who had this going on? And
7 it's going on across this country to Little League
8 Baseball players, girls and boys.

9 And that's why the ten years -- we say ten
10 years -- some of these boys in this case were abused in
11 '18. So five years between that and -- ten years is
12 reasonable. And at '18 -- 2018 Congress addressed it.
13 And so there -- a reasonable prudent company or business
14 like Little League Baseball, who's in the heartbeat,
15 would be looking at all of -- they've got evidence of
16 their players being abused. And so there's an audit.
17 There is a study. There is a survey by their safety
18 department who were charged specifically with that
19 responsibility to see what's happening and how we
20 prevent it. And they exist in their internal files of
21 Little League Baseball. And that's what we're -- that's
22 what we're asking for --

23 THE COURT: Let me ask you this question:
24 How do we avoid this turning into a trial on abuse
25 nationwide? Do you see what I'm saying?

1 MR. D. BERNSEN: I do. I do. But -- and
2 herein is the situation is that they are a national and
3 international company. And if they have knowledge of
4 these boys being abused or this one for years leading up
5 to it and sat there and covered it up like the movie
6 Spotlight where they're covering it up, they're covering
7 it up, and they're doing a blind eye away from it, then,
8 yeah, this -- this case is about that -- about what they
9 did nationally. It's just like -- whether it's Mobil or
10 whether it's a big company. Black & Decker. If they're
11 getting reports that a particular hand tool is killing
12 and hurting people and it hurts somebody up in
13 Hardin County, then, yeah, what would a reasonable
14 prudent person do? Manufacturer or whatever.

15 Same thing here is what are they doing. What
16 are their internal stuff -- their documents showing?
17 That's what we're after. That's what we're after. And
18 if -- I can tell you up -- there were multiple --
19 multiple instances across this country where
20 Little Leaguers were being abused leading up to and
21 including '18. Why it's important to go back is because
22 then the legislation said -- Congress stepped in and
23 said enough.

24 THE COURT: Yeah. And let me --

25 MR. D. BERNSEN: And so there's going to be

1 talk back and forth. They ought to have it. If they
2 don't, tell us they don't have it, and then we'll bond
3 them for that, if the Court allows it in. But it is
4 evidence if there is not -- if they know players are
5 being abused and they're not trying to figure out how to
6 stop it, I think that's that evidence.

7 THE COURT: Let me --

8 MR. D. BERNSEN: In my opinion.

9 THE COURT: Again, this, kind of, comes
10 back -- I've been in Mr. Villarreal's shoes before.
11 I've actually tried the defense of one of these, the
12 sexual abuse of a four-year-old girl.

13 MR. D. BERNSEN: Terrible.

14 THE COURT: And what was really terrible is
15 my client didn't do it. It was the current boyfriend of
16 the child's mother. And that came out at trial. And,
17 in fact, I was driving down and saw the church where --
18 had the church school and what have you. You know, if
19 you were to ask a -- the Baptist General Convention of
20 Texas or something like that to produce all audits,
21 well, maybe that got turned in as a complaint had been
22 made, but that number doesn't show the ultimate
23 outcome --

24 MR. D. BERNSEN: That's right.

25 THE COURT: -- that somebody was exonerated

1 essentially from that.

2 MR. D. BERNSEN: That's right.

3 THE COURT: That's where admissibility might
4 run -- they might say, well, we had 100 of these, but
5 maybe 20 of them were false claims or something. Who
6 knows, you know?

7 And how -- and that's -- if we get to trying
8 all these different complaints, then that creates --
9 that might not be the right impression to leave on the
10 jury.

11 MR. D. BERNSEN: I agree with that, your
12 Honor. That's evidentiary. I have tried one similar to
13 what you're talking where the man was innocent. It was
14 the grandfather. And I tried it. I actually did
15 criminal work at that time. It was a criminal case.
16 But I've had product cases where there were multiple
17 people all over the country.

18 THE COURT: Right.

19 MR. D. BERNSEN: And so you run into that
20 problem. But at this point in time of the discovery, we
21 need to look at it.

22 THE COURT: And it may not be admissible down
23 the road.

24 MR. D. BERNSEN: Exactly. Exactly.

25 THE COURT: Again, I'm going to stress --

1 that's why I gave my little sermonette when we started
2 here. The discovery basket is bigger. The
3 admissibility, I'm not so sure.

4 MR. D. BERNSEN: Absolutely.

5 THE COURT: That's going to take a lot of
6 scrutiny.

7 MR. D. BERNSEN: Absolutely. And we're going
8 in there with our eyes wide open, but we need to be able
9 to see what, if anything, they did. And the Court is
10 protecting -- we have a confidentiality agreement in
11 place, your Honor, that they -- everything they have
12 produced is confidential. I disagree with it, but it's
13 confidential. So anything that they produce is
14 protected by the confidentiality agreement. And --

15 THE COURT: Well, what I don't want to have
16 produced is identifying information about teenagers.

17 MR. D. BERNSEN: I agree.

18 THE COURT: Children.

19 MR. D. BERNSEN: I agree.

20 THE COURT: I think their identities need to
21 be protected.

22 MR. D. BERNSEN: Absolutely.

23 THE COURT: Whether they're in Wyoming or
24 wherever they are.

25 MR. HARPER: To make sure I understand again,

1 we're happy to go nationwide, which I understand is your
2 ruling. But I'm also trying to figure out -- since
3 we're in 80 countries, are you looking for the reports
4 of the other 79 or just the United States here?

5 MR. D. BERNSEN: I didn't hear what he said.

6 THE COURT: Oh --

7 MR. VILLARREAL: Mr. Harper, we're having a
8 little bit trouble hearing.

9 THE COURT: What I heard him say, I think,
10 was are we going to limit it to the United States as
11 opposed to going international?

12 MR. D. BERNSEN: United States.

13 THE COURT: I think we have to limit it to
14 something like the United States.

15 MR. D. BERNSEN: Yes.

16 THE COURT: I mean, this is going to get to
17 be more than you ever really -- more than anybody can
18 chew really.

19 MR. D. BERNSEN: United States.

20 MR. VILLARREAL: Mr. Bernsen, can we have
21 that agreement for all discovery requests limited to the
22 U.S.?

23 MR. D. BERNSEN: Yes.

24 THE COURT: Well, unless it's further limited
25 for District 12.

1 MR. VILLARREAL: Unless it is limited further
2 to District 12.

3 THE COURT: I'll grant that. It's not that
4 we don't have concern -- and the Court does have concern
5 for people and children who live in other countries. In
6 fact, I'm dealing with a matter right now involving your
7 firm and two children that -- and whether they need to
8 be shipped back to England. So, I mean, yeah, we see --
9 we deal with children's rights from all around the world
10 here in Beaumont, Texas, in the federal district court.
11 But at some point, I just think we need to draw it down.
12 And then I can see issues -- of course, you could
13 probably translate it for us, but it's going to be in --
14 like those Chinese documents I got in that case.
15 They're going to be in different languages, and it's not
16 much use to anybody really.

17 All right. So whatever safety audit -- I
18 don't know what it is -- but if it is something that's
19 looking at -- whether they're making sure their
20 procedures are being followed or if they're not being
21 followed -- how many reports -- I mean, either they're
22 not being enforced at all or they are being enforced and
23 we're finding some issues, or maybe they're being
24 enforced and -- I don't know what the evidence is. It's
25 99.9 percent pure. It's clean. Nothing. And then if

1 that's the case, the defendant is going to want to
2 stand up and say, man, we have a system in place that's
3 99 -- Ivory Soap, it floats.

4 MR. D. BERNSEN: I agree, your Honor. I
5 suspect if it was 99.9 percent, we would already have
6 seen it, and we wouldn't be having this conversation. I
7 agree with you.

8 THE COURT: Okay.

9 MR. D. BERNSEN: I have been on the other
10 side, and I have seen it.

11 THE COURT: Yeah. Okay.

12 MR. D. BERNSEN: I think we're good.

13 THE COURT: What else do we have?

14 MR. C. BERNSEN: No. 29.

15 THE COURT: Am I assuming that these requests
16 for production -- I haven't compared them -- are
17 essentially the same that you have to the other
18 entities? So -- is that right?

19 MR. C. BERNSEN: There may be slight
20 differences, but these are the ones I'm focusing on.

21 THE COURT: Okay. Let's just go to what
22 you're focused on.

23 Go ahead.

24 MR. C. BERNSEN: Thank you, your Honor.

25 So No. 29 is communications -- it's in the

1 same bank -- communications received by Little League
2 regarding allegations of child abuse for ten years,
3 right? So the ten years, I think the Court has said
4 that's reasonable. So, basically --

5 THE COURT: Well, it's reasonable in part
6 because some of this alleged activity occurred five
7 years ago. So we're talking about -- you know, what was
8 the mindset? What was happening with LLB during the
9 five years -- it's really -- in a sense, it's asking for
10 five years before the date of the alleged incident.
11 That's really pretty darn reasonable, and I'll state
12 that if anybody wants to have another judge review this.
13 That's really what we're talking about.

14 MR. C. BERNSEN: I agree.

15 THE COURT: Go ahead.

16 MR. C. BERNSEN: And it said -- so,
17 basically, they say they're withholding privileged
18 documents -- so I skipped several --

19 THE DEPUTY: Microphone, please.

20 THE COURT: Well, all communications --

21 MR. C. BERNSEN: I apologize --

22 THE COURT: Hold on a minute now. All
23 communications. Now that, as stated -- as worded could
24 well include letters from lawyers.

25 MR. C. BERNSEN: And if there's -- just like

1 you said earlier, Judge, if there is anything that they
2 feel is privileged -- and, obviously, if they need to
3 hold it back, and we can do in camera. We can do a
4 privilege log and in camera, that's fine. I understand
5 that. But then you get down here and it says it's so
6 temporally attenuated, which, I mean, I think that goes
7 to the ten years again. That's why I was bringing it to
8 your attention --

9 THE COURT: Okay. Regarding allegations --

10 MR. C. BERNSEN: And then at the very end,
11 they say they've done five years' worth. And, again,
12 that's why we're here. Five years' worth, we believe,
13 is not enough. We asked for ten, and we would ask the
14 Court to tell them to produce ten years.

15 THE COURT: Well, I'm going with ten years.
16 Five years, we get to the point -- the date of the
17 abuse -- alleged abuse. But I am very concerned -- this
18 "all communication received by LLB regarding
19 allegations." They have to assert attorney-client
20 privilege on that. It would be malpractice to include
21 that. I'm going to sustain any objection based on
22 attorney-client, work-product.

23 MR. D. BERNSEN: Absolutely. That's fine,
24 your Honor. If they'll extend it ten years, and then
25 we'll deal with the rest of it later. The issue was --

1 they said they produced relevant non-privileged
2 communication for five years. We just need to extend it
3 for the reasons --

4 THE COURT: All right. We'll go ten years on
5 that.

6 MR. C. BERNSEN: Thank you, your Honor.

7 And then No. 30 -- I'll speed this up. It's
8 the same principle. It's all communications sent to
9 Samantha Mahaffey. That's who they had on their
10 website. If you have issues, if you have problems,
11 contact Samantha Mahaffey. That's who -- one of the
12 people we're deposing. And so we're asking --

13 THE COURT: Now, again, all communications to
14 her -- in the modern era, lawyers rarely use a letter.
15 Everything is sent via e-mail. So this woman,
16 Samantha Mahaffey, may be getting correspondence from
17 lawyers -- maybe even the lawyers in this case. I don't
18 know. So attorney-client now -- what are we talking
19 about --

20 MR. C. BERNSEN: No. Judge, absolutely.
21 There's no doubt she has received e-mails from lawyers.
22 And we're not saying that those should be produced.
23 What we're saying is Little League International had
24 this website on their -- they had this e-mail address on
25 their website telling the public if you have problems or

1 an allegation of child abuse -- I forgot how they said
2 it -- send it to this e-mail address. And so what we're
3 trying to say is, okay, we want to know any allegations
4 of child abuse -- obviously, excluding attorney-client
5 privilege -- you know, communications from lawyers --
6 all communications in the ten years. And at the bottom
7 of this, they say we'll give you five years. That's why
8 we're just here asking the judge to say --

9 THE COURT: I'm going to go ten years. Now,
10 no attorney-client. And, also, I don't want any
11 personal information of -- you know, let's say
12 somebody's mother or somebody said, "I'm out here in
13 Oklahoma and somebody did something to my son and his
14 name is Henry." Well, I don't want the names. It has
15 got to be sanitized. I don't want that.

16 Are we clear?

17 MR. D. BERNSEN: Yes, sir. It can be. We
18 have confidential -- you know, this confidentiality
19 agreement, which we have given the defendants interviews
20 with the boys -- the plaintiffs and everything. So we
21 are very aware of the need to protect these little
22 people. And we're not going to do anything like that
23 that that would jeopardize either our folks or anybody
24 else's folks.

25 THE COURT: The other thing -- let's make

1 sure we're clear on something. I have no doubt the
2 Bernsen firm would not do this, I'm convinced, but the
3 list of potential plaintiffs out there. I mean, the
4 statute of limitation runs -- it doesn't even start
5 until they're 18. You know, if personal identifying
6 information were out there in the domain, I mean, that
7 could be a lawyer's bonanza. And I don't think
8 that's --

9 MR. D. BERNSEN: We're not doing that.

10 THE COURT: A fishing expedition that would
11 fill up the nets potentially, and I don't think that's
12 what this should be used for. That's why I want to have
13 these names redacted. Do you see what I'm saying?

14 MR. HARPER: Understood, your Honor.

15 THE COURT: What else do we have?

16 MR. C. BERNSEN: No. 31. It says, "Produce
17 all" -- okay, Judge. So my dad mentioned it earlier.
18 In 2018, there was the -- Little League supposedly
19 overhauled or amended, changed in some way their child
20 protection programs. That's an important date to
21 bookmark, 2018. So all I'm asking for is -- in part, in
22 response to Congress', you know, adoption bipartisan of
23 the Safe Sport Act.

24 THE COURT: Okay.

25 MR. C. BERNSEN: So we're just asking for the

1 Little League -- and they objected to this as vague and
2 they're confused about what I'm talking about, which is
3 ridiculous, I think. I'm asking for Little League
4 meeting minutes and/or meeting agendas. As you know,
5 any reputable organization that has board meetings --
6 and they also have an agenda in an anticipation of that
7 board meeting -- concerning Little League's 2018 update
8 of its child protection program. I think it's
9 straightforward --

10 THE COURT: So you're not talking about a
11 couple of people talking about this over the coffee pot
12 back at the office. You're talking about a meeting of,
13 like, the board of directors or something of the --

14 MR. C. BERNSEN: Correct. The Little League
15 International changed its child protection policy in
16 2018. We just want to see the board -- like, what the
17 board talked about when it was on the agenda --

18 THE COURT: If they have minutes of --

19 Mr. Villarreal, maybe you can help us on
20 this. I assume somebody at LLB adopted a change in
21 their program.

22 Do we have any idea -- was that done in a
23 formal board meeting or just two guys sitting around at
24 the coffee pot in the kitchen on the 4th floor of some
25 building someplace?

1 MR. VILLARREAL: Yes. From a reasonable
2 search of the minutes that the client has provided us,
3 the board of directors minutes --

4 THE COURT: Right.

5 MR. VILLARREAL: -- there was no comment of
6 the 2018 update of the child protection program.

7 THE COURT: So the answer is you don't have
8 any documents?

9 MR. VILLARREAL: We don't have any documents
10 for --

11 THE COURT: But there was a change, right?

12 MR. VILLARREAL: There was a change.

13 THE COURT: I'm just curious. How did that
14 change come about?

15 MR. VILLARREAL: The information that we have
16 is that that was done through -- with the involvement of
17 in-house counsel and with the involvement of other
18 personnel within the organization and not necessarily
19 discussed in the formal board meetings.

20 THE COURT: It was -- it was just a policy
21 change that didn't need to -- from what I'm hearing,
22 didn't rise to get put on an agenda item for purposes of
23 the board of directors meeting. It was just something
24 that was administratively handled in consultation with
25 attorneys. Is that your understanding?

1 MR. VILLARREAL: I would say that it was
2 not -- it is not in the minutes of the board of
3 directors meetings and that that was handled by --

4 THE COURT: Were there any other -- I guess
5 let's expand it. Beyond board of directors to like
6 board of managers -- I don't know -- anybody, hey, let's
7 all -- I don't know enough about it -- but all of our
8 top level officers, vice presidents, whatever, come
9 together, discuss this, and say we're -- this is what
10 we're going to approve? Anything like that?

11 MR. VILLARREAL: We would need to consult to
12 the client about that, your Honor.

13 THE COURT: Okay.

14 MR. VILLARREAL: But we have produced
15 documents that talk about the 2018 update to the child
16 protection program.

17 THE COURT: Well -- okay. If it is
18 attorney-client, work-product, that's not -- I'm not
19 going to make you produce that. It sounds to me that
20 your answer is there are no board of directors meeting
21 minutes that pertain to this going back ten years.

22 MR. VILLARREAL: Correct.

23 THE COURT: If there are any other -- they
24 had a meeting -- you know, I'm not asking for
25 attorney-client, work-product -- but, you know, some of

1 the officers, people -- somebody -- and I'm not talking
2 about a couple of people sitting by a coffee pot in the
3 coffee shop. I'm talking about where they sat around
4 and said, "This is the draft of what we're going to put
5 out. Do you-all think it's a good idea? All right.
6 We're going to do it."

7 If they have any minutes of those types of
8 meetings, okay?

9 MR. VILLARREAL: Okay, your Honor.

10 THE COURT: Produce that. If you don't have
11 them, then say you don't have them.

12 MR. VILLARREAL: Okay, your Honor.

13 MR. D. BERNSEN: Your Honor, I agree. And if
14 they don't have them -- if that animal doesn't exist,
15 then they -- I want -- we need to have them say so in
16 their --

17 THE COURT: Yeah. I understand. And then --
18 you have the changes, right? I mean, that's why this is
19 here.

20 MR. D. BERNSEN: They said in their
21 literature that they changed -- they changed it. And I
22 think the way Little League operates is that you don't
23 do anything without approval. So if that's the clients
24 telling the trial attorneys -- I've been there -- just
25 have Mr. Stahlnecker or whoever say it right there in

1 31, and we'll talk to him about that request when we go
2 up to see him. That's fine.

3 THE COURT: That's it. Okay.

4 MR. C. BERNSEN: Okay.

5 THE COURT: By the way, on these I said I
6 wanted to have redactions now -- and I don't know the
7 number of documents that we're talking about. But, I
8 mean, I might be willing to go -- we've been, kind of,
9 using ten days, but I -- he might need more time than
10 that.

11 MR. VILLARREAL: I can comment on that --

12 THE COURT: Go ahead --

13 MR. VILLARREAL: Since -- in my role as an
14 associate. We would really like more than ten days. I
15 mean --

16 THE COURT: Well, I'm talking about on
17 these I'm saying redact -- these nationwide requests,
18 correspondence -- those I've already said ten days,
19 that's ten days. But on these others, if it's -- you
20 know, require some sort of redaction of personal
21 information, unless you have it --

22 MR. VILLARREAL: And, your Honor, we will
23 need to collect those e-mails from our client. So ten
24 days -- more than ten days --

25 THE COURT: Would 20 days be enough, you

1 think?

2 MR. VILLARREAL: Could we do --

3 Mr. Bernsen, could we agree to more than
4 20 days?

5 MR. D. BERNSEN: It depends on what you're
6 talking about.

7 MR. VILLARREAL: We're talking about the
8 e-mails going back ten years.

9 MR. D. BERNSEN: We could talk about that.
10 What I'm concerned about is in ten days, that all of the
11 documents you produced -- those documents are identified
12 with a specific request for production.

13 MR. VILLARREAL: The judge has ordered that
14 already, yes.

15 MR. D. BERNSEN: Anything past that --

16 MR. C. BERNSEN: That will be fine. The
17 judge has already -- our fear, obviously, is something
18 is produced after these depositions, and we're like, oh.
19 You know, but as long as the judge has said -- if
20 something comes up and we have to readdress it, then
21 that's -- as long as we have that safety net --

22 THE COURT: That might be a supplemental
23 deposition, which, I hope, just for your sake, you can
24 avoid just to avoid the travel expenses.

25 MR. C. BERNSEN: Absolutely.

1 THE COURT: For both sides. But on that
2 second deposition, now we're not -- we wouldn't be
3 plowing the ground that's we've already plowed, if that
4 happens.

5 MR. C. BERNSEN: No.

6 THE COURT: That might be an incentive to use
7 your best efforts to do it.

8 MR. VILLARREAL: Yes.

9 THE COURT: As quickly as you can.

10 MR. VILLARREAL: Okay. We'll do it as
11 quickly as we can. With the understanding that the
12 Court allowed at least 20 days.

13 THE COURT: Yeah. On these that I haven't
14 specifically specified ten, but know that if it doesn't
15 get produced and they take the deposition and, lo and
16 behold, it comes out to be a smoking gun in there, I'm
17 going to allow a supplemental deposition, even if it
18 means having to pay for an extra trip up to
19 Pennsylvania.

20 I'm not going to be -- I'm not inclined to --
21 under these circumstances -- I think everybody here is
22 working in good faith. Already produced 20,000
23 documents, et cetera. I'm not -- I'm not -- people
24 now -- everybody wants sanctions for everything. File a
25 motion for summary judgment, well, they want sanctions

1 for ever filing a lawsuit. That's just unbelievable. I
2 don't know what they're teaching in law schools these
3 days. Sanctions are something reserved for really bad
4 lawyers doing some really bad things, okay?

5 MR. D. BERNSEN: We agree, your Honor.

6 THE COURT: And just discovery -- I mean,
7 everybody is trying to work their hardest to get it
8 done. I'm -- I'm not inclined, absent some strong
9 conversation about that.

10 MR. HARPER: Your Honor, I'm sorry. My back
11 has officially declared it can't sit up anymore. If it
12 acceptable to you, I would like to go ahead and leave
13 Mr. Villarreal to handle the rest of the hearing. I'm
14 real sorry.

15 THE COURT: Yeah. I can see you're in pain.
16 He had back surgery, which is why I'm
17 allowing him to appear --

18 MR. D. BERNSEN: Oh, my goodness.

19 MR. C. BERNSEN: God bless.

20 THE COURT: And I appreciate what you've
21 offered thus far, but I think you're in very, very
22 strong hands with Mr. Villarreal. And I think your
23 interests are being protected and the interests of your
24 clients.

25 You are excused.

1 MR. HARPER: Thank you, your Honor.

2 MR. C. BERNSEN: Hope you feel better.

3 MR. HARPER: Again, I'm sorry.

4 MR. D. BERNSEN: Good luck.

5 MR. C. BERNSEN: No. 36, Judge. And, Judge,
6 just so you know -- because of the law that was passed,
7 Little League put into its rules and regulations that
8 each local league, including Evadale, was supposed to
9 create -- I'm using their terminology here -- a policy
10 that limits one-on-one contact with minors without being
11 in an observable and interruptible distance from another
12 adult for the last ten years. And this -- so we're
13 asking for, you know, ELL, Evadale, where he was --
14 Mr. Isaacks was the president and coach --

15 THE COURT: They either have a policy or they
16 don't --

17 MR. C. BERNSEN: They either have a policy or
18 they don't. And so they say irrelevant. It's not
19 irrelevant at all. I think that's completely wrong.
20 And it says -- but then it says, "We are withholding
21 documents on the foregoing request," which I'm like,
22 "What?" But in the next sentence, "Defendant has
23 produced all responsive documents in its possession,
24 custody, or control." And so it's confusing. And I
25 just think this is absolutely right on the money --

1 THE COURT: Mr. Villarreal --

2 MR. C. BERNSEN: And they need to withdraw
3 their objections and just produce any documents they
4 have.

5 THE COURT: All right. Mr. Villarreal, do
6 you have a comment on this?

7 MR. VILLARREAL: Just generally as to how
8 they define "limits one-on-one contact." If it's
9 your -- plaintiffs' position that the ASAP program must
10 have the one-on-one contact, then, as the judge already
11 ruled, we will produce the documents that are in our
12 possession and control that are the submissions for the
13 ASAP plan for ELL. That has been ruled on by the Court,
14 and we will comply with the Court order.

15 MR. C. BERNSEN: I think, Judge, what the
16 case is with this is they don't have anything, all
17 right? So the answer should be "none." But they don't
18 want to put that because that's --

19 THE COURT: Hold on. They say they're
20 withholding documents --

21 MR. C. BERNSEN: I know. That's why I'm
22 confused. But this is -- this is -- and you'll see,
23 Judge, that every local league is required by
24 Little League to -- it is called -- to have and
25 implement a one-on-one policy, and the policy is,

1 basically, this, Judge -- it makes senses. Churches do
2 it. Schools do it. Where an adult cannot be --

3 THE COURT: Alone.

4 MR. C. BERNSEN: -- alone with the kid
5 without another adult there. And they're all supposed
6 to do it, and we know they didn't have it. They know
7 they didn't have it. We're playing this game. But I'm
8 interested about them saying they're withholding
9 documents. That's what grabbed my attention. But this
10 is not -- this is a straightforward, on the -- "hammer
11 on the nail" discovery request. And it is either going
12 to be none or produce what you have. But there's no
13 reason to be withholding documents back.

14 MR. VILLARREAL: Judge, we can amend that
15 response to make it clear. And I just -- for the
16 record, District 12 Little League and Evadale Little
17 League are separate entities.

18 THE COURT: I understand.

19 MR. VILLARREAL: So Evadale might have
20 something that we don't.

21 THE COURT: Okay. You're going to look at it
22 and see -- if they have something, you're going to
23 produce it?

24 MR. VILLARREAL: From our perspective, yes.

25 THE COURT: You're going to produce it. And

1 then if they don't have it, just say we have no
2 responsive documents and it's done.

3 MR. VILLARREAL: Okay.

4 THE COURT: Is that fair?

5 MR. C. BERNSEN: Fair.

6 THE COURT: Next.

7 MR. C. BERNSEN: No. 38.

8 THE COURT: Okay.

9 MR. C. BERNSEN: No. 38, Judge, is a -- they
10 have to do background checks, which is just the bare --
11 you know, every organization around the country does
12 background checks. And their efficacy is -- we'll talk
13 about that later.

14 But Little League contracted with this
15 company called JDP to do the background checks for local
16 leagues. And so I think this is straightforward. It
17 wasn't crazy. It's not harassing.

18 THE COURT: You just want the contract
19 between LLB --

20 MR. C. BERNSEN: And JDP for the last five
21 years. And they just said, "We will not produce it."

22 MR. VILLARREAL: We strongly object to that
23 one. That has no relevance to the case. So they're
24 seeking contracts between Little League -- my client
25 Little League International with the service provider

1 that provides the background checks. Here it is not
2 disputed in the case that we -- that entities --

3 THE COURT: Do it?

4 MR. VILLARREAL: Did the background for
5 Adam Isaacks. That's not disputed here. So why would
6 the contract be relevant?

7 THE COURT: Well, we paid them X number of
8 dollars or whatever. I don't know.

9 MR. VILLARREAL: Why would that be relevant?

10 THE COURT: What I'm more interested in is
11 what did they find out? What are they --

12 MR. VILLARREAL: I can tell you that, your
13 Honor. The background checks came completely clean.

14 THE COURT: Have you produced those?

15 MR. VILLARREAL: We produced those.

16 THE COURT: Well, I'm going to sustain that
17 as not -- that one -- I'm going to sustain that
18 objection.

19 MR. D. BERNSEN: Okay. Your Honor, I'm going
20 to say this -- that they came back clean, and we'll
21 define clean. But these are the people that supposedly
22 did it. And I want -- you know, their -- their
23 information about -- they came back clean -- I think
24 that the defendants will try to use that. I would like
25 to see the relationship between JD -- JDP as to what the

1 arrangements were with Little League Baseball to do
2 these background searches.

3 It goes -- it may not be admissible, but it
4 certainly may lead to discovery on whether or not they
5 were doing them correctly, whether or not they were
6 getting paid by Little League Baseball for X -- we don't
7 know. But it goes to their relationship on the
8 background checks that these defendants are going to try
9 to rely on. And I would think that we would be able to
10 see what the relationship is. It saves us -- maybe
11 we'll go take their deposition in the case.

12 THE COURT: That's what I was thinking. I'm
13 not telling you what to ask the gentleman in
14 Pennsylvania, but who were your contacts with JDP and
15 what did you ask them to do. Well, we asked them to
16 do -- to do a criminal background check. Does it
17 require anything else? We don't know anything about
18 what they did. Well, who can -- you might have to
19 contact JDP.

20 MR. VILLARREAL: Judge, the background check
21 itself says what was searched --

22 THE COURT: What they did --

23 MR. VILLARREAL: What was searched and what
24 was the results. And the results were zero.

25 THE COURT: So -- in other words, it shows

1 what? Like, criminal background history, sexual
2 predator, or sexual abuse? What does it show?

3 MR. VILLARREAL: All criminal history came
4 out zero.

5 MR. C. BERNSEN: Yeah.

6 THE COURT: So then if that's all that's in
7 the report, but you may have an expert that says, no,
8 that's not a thorough background, you know --

9 MR. VILLARREAL: Plaintiffs can hire a
10 private investigator and see if Adam Isaacks has any
11 other prior criminal convictions. They could do that.

12 MR. D. BERNSEN: Your Honor, what you're
13 going to find is that the background checks --

14 MR. C. BERNSEN: Wait. Judge, background
15 checks --

16 THE COURT: It's not polite to interrupt your
17 father.

18 MR. C. BERNSEN: I'm sorry, your Honor.

19 MR. D. BERNSEN: Thank you, your Honor.
20 Thank you, your Honor.

21 My son, Cade.

22 MR. C. BERNSEN: Judge, as I'm becoming an
23 expert on this, background checks -- their effectiveness
24 are minimal for these situations. 90 percent of child
25 sex offenders, child abusers, they have clean records.

1 They have clean records. That's why you have to have
2 the rules and the safeguards in place to identify
3 grooming and the red flags. Just so you know at the
4 outset of this, when they say, oh, yeah, it's clean, the
5 experts will show that doesn't mean much.

6 MR. VILLARREAL: And they're talking about
7 the merits of the case, your Honor. We're talking about
8 background checks.

9 MR. C. BERNSEN: I'm just commenting on what
10 you said.

11 THE COURT: Let's just make sure we're clear.

12 What we're going to do -- I'm going to
13 sustain the objection. But if these reports are
14 inadequate to really find out if somebody is a predator
15 or something, then whatever they did or didn't do is
16 going to be shown in the reports. Yeah, they did a
17 background check, but they didn't interview -- they
18 didn't make a phone call or references or anything like
19 that. That's obvious from the reports.

20 And then if you have people that -- well,
21 that's not the way you do a background. The school
22 district use a different protocol. They ask for
23 reference or -- I don't even know what the evidence will
24 be, but it seems like you could get there just by
25 looking at the reports and saying that's a wholly

1 inadequate deal. And defendants say, look, we -- they
2 did it, and we were satisfied with it.

3 MR. D. BERNSEN: We're good, your Honor.

4 THE COURT: And I do -- are we getting, kind
5 of, close because I'm not only giving up my courtroom to
6 Judge Heartfield here in a few minutes, I am giving up
7 my wonderful courtroom deputy, and she's going to need a
8 little refreshment break along the way, too, so she can
9 provide the outstanding service to Judge Heartfield that
10 she's given to me over the years.

11 What else do we need to talk about?

12 MR. C. BERNSEN: I'm narrowing some down.

13 Which ones did you say?

14 MR. D. BERNSEN: Samantha Mahaffey.

15 THE COURT: We talked about Mahaffey already.

16 MR. C. BERNSEN: Yeah, we did.

17 Let me just do -- yeah. Judge, real
18 quick, No. 40. You know, any communications between
19 Little League and the parents of the -- of the ELL,
20 Evadale, teams regarding the circumstances of this
21 lawsuit, which is the scandal. And then they put some
22 objections, I guess, and then they say, "Defendant will
23 produce to the extent they exist." We -- you know, we
24 would like you to order them to produce them.

25 MR. D. BERNSEN: Or say they don't have them.

1 MR. C. BERNSEN: Or say they don't have them.

2 THE COURT: Well, I'm going to order them be
3 produced. I can see that being relevant, but I'm going
4 to stand by what I've said all along. Identifying
5 information about other minors -- I think that needs
6 to -- I think that needs to not be produced because I
7 want to protect -- we need to protect, I think, the
8 identification of other minors. I think you want to
9 find out what did they tell parents.

10 MR. C. BERNSEN: That's it.

11 THE COURT: Dear Parent of Henry -- you know,
12 Henry's name gets blacked out -- because it's not
13 identifying -- Henry is -- I want that redacted.

14 MR. C. BERNSEN: We just want to know, Judge,
15 if Little League International after this scandal, you
16 know, identified -- e-mailed, sent any communications
17 to, for instance, the parents, you know, your child was
18 coached by this guy a couple of years ago and he's in
19 jail on multiple counts of child sex offenses, and we
20 just need to let you know that this happened. Like, you
21 need to have a serious talk with your child. He may
22 have been exposed to this predator. We're just trying
23 to get -- which we think a reasonable organization would
24 do. And all I'm trying to do --

25 THE COURT: I think you can do that without

1 identifying the --

2 MR. C. BERNSEN: Absolutely.

3 THE COURT: -- name of the child either
4 involved in the actual abuse or to this other parent of
5 another child. That child's identity needs to be
6 redacted.

7 MR. C. BERNSEN: That's fine with us, Judge.

8 THE COURT: But if they did something like
9 that, I think that might be relevant. It could even be
10 an admission against interest. I don't know what it is.
11 It could show -- I don't know. I could think of a
12 number of things, that I won't even verbalize, how I
13 think it could be relevant.

14 MR. VILLARREAL: And for the record,
15 defendants did not object as to relevance.

16 THE COURT: Yeah, I know. It's just -- just
17 make sure the identifying information is redacted.

18 MR. VILLARREAL: Yes, sir.

19 THE COURT: Because it really doesn't matter
20 whether this letter was sent to Henry or to John. It
21 doesn't matter. It's just the fact that the letter
22 itself, if at all, was sent. That's all I care about.

23 MR. C. BERNSEN: Real quick before --

24 Mr. Villarreal, are we clear -- we asked for
25 Mahaffey's personal file. Didn't y'all already say

1 y'all would produce that?

2 MR. VILLARREAL: I'm sorry. What was your
3 question?

4 MR. C. BERNSEN: Didn't y'all agree that
5 y'all would produce Mahaffey's personnel file before the
6 depo?

7 MR. VILLARREAL: We agreed that we were going
8 to collect that from the client. We have not at this
9 moment. We need to review it first to see if there's
10 any relevance to it. We agreed to review it, and if
11 there is any relevance to the case, we would produce
12 that. But we can still confer about it.

13 MR. C. BERNSEN: Okay.

14 MR. VILLARREAL: And this is not part -- your
15 Honor, he's asking about the fourth set of requests for
16 production. Not the document that you --

17 THE COURT: So it's not before the Court at
18 this point in time?

19 MR. VILLARREAL: Correct. And that was not
20 part of the motion to compel.

21 THE COURT: So you're not really prepared
22 to --

23 MR. VILLARREAL: Right. That was not part of
24 the motion to compel.

25 MS. LAINE: Your Honor, to be clear, the

1 motion to compel was filed at a time when there was only
2 one document dump, and it was a small one. So this has
3 evolved over time, and we've already had discussions
4 about the personnel file of Samantha Mahaffey. And her
5 deposition is scheduled for September 21st, so we don't
6 want them to not give it to us or dump it on us last
7 minute with a bunch of redactions two days before the
8 depo.

9 THE COURT: Yeah. You know, let me say it
10 like this: That may well be relevant in this sense.
11 What if her personnel file shows -- and I don't mean to
12 say anything critical of anybody who drives a panel
13 truck stocking potato chips in vending machines.
14 Sometimes I, in the course of my career, have had, kind
15 of, an envious eye on those individuals who drive trucks
16 like that and think it might not be a bad life to have,
17 oh, we have to get some more Lay's potato chips in this
18 machine. And that's my biggest hurdle of the day. It
19 might be, kind of, a nice life in many ways.

20 But would you want somebody with just that
21 experience or background making decisions about whether
22 or not somebody's qualified and confident to be a
23 Little League coach or, you know, whatever? I guess --
24 and know procedures, you know, if a complaint is made,
25 well, the law says you're supposed to notify the

1 district attorney in that county or whatever. I mean,
2 to be qualified and competent for the job, in that
3 sense, maybe having the personnel file -- and, also, was
4 the person -- well, she's our gal in charge of this, but
5 she's on probation right now because of some bad -- I
6 don't know. I guess that could be -- I can see an
7 argument where it might be relevant.

8 MR. VILLARREAL: I agree that there might be
9 parts of the employment file that can be relevant.
10 Judge, I cannot represent what is in there because I
11 haven't seen it.

12 THE COURT: Okay. That's fair. I'll tell
13 you what -- and I'm going to -- and even that would have
14 to have certain -- even if you were to produce it,
15 certain redactions because we don't need to know what
16 her contributions to her 401K plan are or what health
17 insurance program she's signed up with or anything like
18 that. I mean -- and you haven't had a chance to review
19 that. I guess what I'm saying is I'm leaning toward
20 producing something. Maybe not all of it. I don't
21 know. To know of -- something about her background,
22 whether she has been reprimanded. You know, sometimes
23 things do show up in personnel files.

24 So -- but if there's a deposition scheduled,
25 let's get that -- let's get that ironed out quickly.

1 And if -- I'm going to be pretty much engaged, but we
2 can get that one thing over to a magistrate judge and
3 have the magistrate judge make a determination on that
4 pretty quickly.

5 MR. VILLARREAL: Yes, sir.

6 MR. D. BERNSEN: Your Honor, and her medical,
7 we don't want that. Insurance, no. This is the head of
8 security. The head --

9 THE COURT: Yeah. What's her background. I
10 mean --

11 MR. C. BERNSEN: Yeah, Judge. Her
12 application, her training, and all that stuff.

13 THE COURT: I think I've made that plain.
14 All I'm saying is that I want to see that produced.
15 But, in fairness to Mr. Villarreal -- I mean, I think he
16 needs to have an opportunity to at least review it
17 because there could be something in there that has some
18 legitimate -- and if I just said, I'm ruling from the
19 bench, he hasn't seen it, nobody's seen, but it's going
20 to be produced --

21 MR. D. BERNSEN: No.

22 THE COURT: And then, well, the judge
23 ruled -- no. If there is a glaring thing in there that
24 needs to be knocked out, you know, and not produced, I
25 think he needs to have an opportunity to look at that.

1 I think that's fair.

2 MR. D. BERNSEN: No. I think that's fair,
3 and that's really well-taken. Where -- this is, what,
4 Thursday? Thursday. We're going to Pennsylvania on the
5 19th, 20th, and 21st.

6 And so we need a turnaround on that -- I
7 don't want -- as soon as you can.

8 MR. VILLARREAL: We've asked for that to our
9 client already.

10 THE COURT: Okay. Let's make it -- let's
11 make sure they have it in ten days. I know it's pushing
12 it a little close to your deposition time, but I'm also
13 confident that with the members of your team that you
14 have, you will be able to process that information. And
15 if there's something worthy of a good question on
16 cross-examination, you'll glean it from whatever is
17 produced.

18 MS. LAINE: Just as a follow-up to that,
19 should there be something we have a dispute about and
20 we're traveling on the 19th and we have a dispute on
21 that day about the rest of the file, is that a hotline
22 call, or is it a call to chambers?

23 THE COURT: We'll accommodate you as quickly
24 as we can.

25 I think this may be for Judge Heartfield's

1 deal. We've got to go.

2 So, quickly, is there any other hot button
3 one?

4 MR. D. BERNSEN: We have a hot button one,
5 but we can wait, your Honor. It's on the underwriting,
6 but we'll get to that. You've been very kind to us
7 and --

8 THE COURT: I think you understand that we've
9 got some limitations. One of our courtrooms is down --

10 MR. D. BERNSEN: Absolutely.

11 THE COURT: -- due to a problem they found in
12 there. And -- and I've got to let my court reporter
13 have a break.

14 MR. D. BERNSEN: Absolutely.

15 THE COURT: And -- not only for -- because
16 she's been going a long time here, but she's got to
17 refresh herself for Judge Heartfield, you know. And --

18 MR. D. BERNSEN: Thank you, your Honor.
19 Thank you for having us here today and all the court
20 personnel.

21 THE COURT: All right. Anything further?

22 MR. VILLARREAL: Likewise, Judge. And thank
23 you for the Court's time, too.

24 THE COURT: I just want to say I do want to
25 have a private moment with Mr. Villarreal in chambers

1 unrelated to this.

2 MR. D. BERNSEN: That's absolutely fine.

3 THE COURT: He's a former law clerk. And
4 there's -- not about this.

5 MR. D. BERNSEN: Good man. A good man. You
6 did well. Thank you.

7 MR. C. BERNSEN: Thank you, Judge.

8 THE COURT: All right. We're adjourned.
9 (Proceedings adjourned at 12:55 p.m.)

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13 COURT REPORTER'S CERTIFICATION.

14 I hereby certify that on this date,
15 September 12, 2022, the foregoing is a correct
16 transcript of the record of proceedings in the
17 above-entitled case.

18

19



APRIL D. HARGETT
Certified Realtime Reporter
Eastern District of Texas
Beaumont, Texas

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